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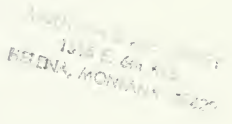
MISCELLANEOUS STUDIES

A REPORT TO THE

FORTY-SEVENTH LEGISLATURE

REVENUE OVERSIGHT COMMITTEE



NOVEMBER 1980

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STATE CAPITOL
HELENA, MONTANA 59601

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SUMMARY

One of the major responsibilities of the Revenue Oversight Committee is to continually examine the operation of existing taxation legislation. The Committee therefore seeks to understand and probe the strengths and weaknesses of Montana's taxation laws in the interim between legislative sessions.

During the 1979-1981 Interim, the Revenue Oversight Committee researched taxation issues relating to subjects ranging from the operation of rural special improvement districts to oil and gas development and its impact upon local government services.

The following report contains the memoranda and research material relevant to the major issues addressed by the Revenue Oversight Committee. Copies of the legislation recommended by the Committee are included at the end of the report.

FINAL COMMITTEE RECOMMENDATIONS

The Revenue Oversight Committee recommends that the 1981 Montana Legislature enact the following legislation:

(1) LC 14 - "AN ACT TO ALLOW THE DEPARTMENT OF REVENUE TO WAIVE INTEREST UPON DELINQUENT TAXES AND PENALTY IN CERTAIN CASES"

(2) LC 15 - "AN ACT TO PROVIDE THAT THE SAME INTEREST RATE APPLY TO OVERPAYMENT REFUNDS AS TO DELINQUENT TAX DUE FOR THE INCOME AND CORPORATION TAX"

(3) LC 102 "AN ACT TRANSFERRING RESPONSIBILITY FOR THE CALCULATION OF THE FOUNDATION PROGRAM'S ADDITIONAL STATE LEVY FOR STATE DEFICIENCY AND STATE PERMISSIVE DEFICIENCY LEVY FROM THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO THE GOVERNOR'S BUDGET DIRECTOR"

(4) LC 315 "AN ACT TO REDUCE INDIVIDUAL INCOME TAX ON INTEREST INCOME EARNED BY A TAXPAYER"

(5) LC 377 "AN ACT TO ELIMINATE CERTAIN TAXES FOR LINEAL DESCENDANTS"

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September 6, 1979

SUBJECT: SPECIAL IMPROVEMENT DISTRICTS AND RURAL SPECIAL IMPROVEMENT DISTRICTS

DATE: September 6, 1979

PREPARED FOR: REVENUE OVERSIGHT COMMITTEE

PREPARED BY: Teresa Olcott Cohea

I. DEFINITION OF SID's AND RSID's

II. HISTORY OF MONTANA STATUTES GOVERNING THEM

III. POSSIBLE AREAS OF CONCERN

IV. STATUTES GOVERNING THE CREATION AND FUNDING OF SID's AND RSID's

V. RECENT ATTORNEY GENERAL'S OPINIONS CONCERNING THEM

I. DEFINITION

Special improvement districts (SID) and rural special improvement districts (RSID) are political subdivisions of the state created for the purpose of funding capital improvements in a local area. These districts are created by city or county governing bodies, who retain jurisdiction over the districts. Today, SID's are created to lay sidewalks and pave streets in a new subdivision, provide lighting in a district, or refinish roads in a neighborhood.

The theory of special improvement districts is that the cost of an improvement is borne by those who benefit from it. The local governing body sells bonds or issues warrants to finance the project, which taxpayers in the district repay over a number of years through special assessments on their property. Theoretically, the rest of the city or county taxpayers, who do not benefit directly from the project, do not pay for its costs.

II. HISTORY OF MONTANA STATUTES GOVERNING THEM

Special improvement districts have been important to the expansion of Montana's cities and towns for nearly a century. In 1887, the legislature enacted a "complete municipal code" providing for the creation of special districts upon petition of the freeholders of the district, the financing of capital improvements through the issue of notes, and the assessment of the costs of the improvement to taxpayers in the district.[1]

The fact that this new law was well known and often used can be inferred from the amendments made to it by the 1889, 1893, 1897, and 1901 sessions, as cities experienced slight problems with the law or needed new provisions. In 1889, for example, the legislature deleted the requirement that freeholders must petition for creation of the district.[2]

By 1913, the much amended sections were "such a complex piece of patch-work, and contain[ed] so many inconsistent and incongruous provisions as to make the law upon the subject uncertain in the extreme."[3] The legislature repealed the existing provisions and enacted new provisions, based on California's laws. This 1913 law is the basis for our current statutes on special improvement districts. In 1915, the legislature extended these provisions to counties, giving commissioners the authority to create RSId's in "thickly populated areas" outside municipal boundaries upon petition of 60% of the freeholders in the proposed district.[4]

While, theoretically, special improvement district costs were to be funded by property owners in the district, Montana statutes have since 1887 provided for the possibility of partial payment by the rest of the taxpayers in the city or county. The 1887 law, for example, allowed the city council to pay up to one-half of the cost of certain projects from the city's

general fund. Amendments in 1897 required the city council to assess not more than 75% of the cost of improving a street on the property owners bordering the street and not less than 25% on all the property owners in the city.[5]

These provisions were, presumably, based on the belief that the entire city benefitted to some degree by some types of improvement made in one of its parts. This tradition was, however, considerably enlarged in 1929 when the legislature required all cities in which bonds for any type of SID project were outstanding to create an SID revolving fund funded by loans from the city's general fund and by a mandatory levy on all property in the city. The levy was limited in any one year to 5% of the total amount of bonds outstanding. The reason for this law was the depressed real estate market and the increase in the delinquencies in Montana brought about by low agricultural prices:

> It is a matter of common knowledge that there exists at present...practically no market at all for special improvement bonds and warrants of the communities of the state of Montana... the value of district bonds and warrants [is] problematical, and their salability greatly impaired....The public credit and public good necessitated some action....

At least one taxpayer felt that the 1929 legislature had taken the wrong action. He brought suit against Great Falls on the grounds that the general levy for the SID revolving fund was not for a public purpose and because the 1929 act was a special law, benefitting only bondholders and residents of special improvement districts. The Montana Supreme Court, however, disagreed. It held that...

> "work to be done within such improvement districts... is essentially public work, and the purpose of providing for such work necessarily a public purpose...That the purchasers of bonds or warrants shall, in the future, have greater security for the payment thereof than they have had in the past, is but incidental to the public purpose of the Act before us, and does not mitigate against its validity."[6]

The Court did rule, however, that a revolving fund could not be created to back bonds issued prior to 1929.[7]

The creation of the revolving fund and the mandatory levy did not, however, transform SID bonds into general obligation bonds, the Court later held. Money from the revolving fund is simply loaned to the SID fund and the revolving fund has a lien as security. No bondholder can require the city to make a general levy in excess of the 5% of outstanding bonds

per year to redeem the bonds.[8] [However, over a period of years the "5%" general levy would eventually pay off the bonds. The city could then take possession of property in the district for delinquent assessments and - hopefully - be able to sell it to repay the loan to the revolving fund.] In 1957, the legislature expanded the provision for a revolving fund to RSID's.[9]

After 1929, SID bonds sales improved and continued to be a major method of developing cities and counties. The statutes governing SID's and RSID's have been amended frequently and interpreted in scores of Supreme Court decisions and Attorney General's opinions. New provisions for special improvement parking, lighting, and street sprinkling districts have been added.

A recent A.G. opinion (described below) and several bills introduced during the 1979 session suggest that demand for RSID's and SID's to finance development costs in the new subdivisions may be increasing.[10]

III. POSSIBLE AREAS OF CONCERN

During the 1979 session, several legislators became concerned about the use of SID's and RSID's to finance improvements in new subdivisions. They raised some of the following points.

Pledge of public credit - little public participation

While SID and RSID bonds are not general obligation bonds, statute requires governing bodies to make a general levy against all property in the city or county to fund an SID revolving fund, which makes loans to districts that are unable to make their bond payments. In addition, the governing body may make loans from the government's general fund to district funds. [These statutes are described in greater detail in Section IV.]

Thus, in a limited sense, SID's and RSID's are a public obligation, but the public outside the district has traditionally had little voice in their creation. Only property owners in the district are mailed notice of the proposed creation of the district and only they can protest the district's formation. Moreover, there is no statutory limit on the amount of SID's or RSID's that may be outstanding in a locality at any time, so the "5%" general levy could, conceivably, become quite large in a rapidly developing community.

This problem may be intensified as a result of a recent A.G. opinion, which held that RSID's can be created in an area in which no one resides at the request of a single property owner, the developer. The Attorney General noted that:

> Since the county taxpayers are exposed to potential financial liability should the developer's business judgement prove faulty, the commissioners should exercise great care in assuring that the public interest requires creation of a "developer RSID."

He held, nonetheless, that an RSID could be created on unoccupied parcels of land.[11]

There are also two additional areas of uncertainty surrounding the general levy. Sections 7-12-4222 (SID's) and 7-12-2182 (RSID's) provide that the levy may not exceed "in any one year" 5% of value of the outstanding bonds. Department of Community Affairs local government audit staff interpret this to mean that no general levy need be made if the amount in the revolving fund equals 5% of the outstanding bonds. Some cities and counties, however, interpret the sections to allow a levy of 5% of this value annually and build a much larger revolving fund.[12] In Polson, for example, the amount in the revolving fund in 1977 equaled 10% of the outstanding bonds. In Missoula, the fund in 1978 equaled 11% of the outstanding bonds.[13] Further, the statutes permit but do not require local officials to transfer excess funds in the SID or RSID revolving fund back to the general fund. (Sections 7-12-4227 and 7-12-2186) So, taxpayers outside the district could, conceivably, never be repaid for the loan they made to the SID district.

SID bond salesmen contended that the revolving fund was necessary to sell bonds. In future research reports, I will gather more information on this point.

Lack of information about districts

Many taxpayers are unaware that a liability against his property is created by each new SID or RSID. Moreover, unless he reads the legal notice section of his local newspaper, an owner of property is unlikely to know that one is being formed. Inhabitants in Missoula may be surprised to know, for example, that 1/2 of one mill was levied last year for the SID revolving fund for the 101 outstanding SID bonds.

This lack of information continues at the state level. While counties and cities keep separate accounts for each SID or RSID bond, records of the outstanding balance of each bond, and are legally required to have revolving funds if any bonds have been issued in the local government unit, this information is not readily available outside the county courthouses or city halls. The only record of SID and RSID bonds collected by a state agency is in the Annual Reports and Treasurer's Reports filed with the Department of Community Affairs.[14] The format and completeness of these reports varies substantially and capturing data about bonds is difficult.*

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*Recent changes in forms and standardization of accounting procedures may help in gathering such data in the future.

Several hours research in these sources yielded the incomplete data shown in Table I. County Treasurers' Reports show the revolving fund balances, for example, but not the value of outstanding bonds. Only if an audit of the county was performed is this information stored in DCA files.

This lack of information makes it difficult to determine the total amount of indebtedness in SID's and RSID's throughout the state, whether use of them is declining or increasing, and whether district funds for repayment of bonds are in a healthy state.

TABLE I

City or Town	Fiscal Year	Balance in Revolving Fund	No. of Districts	Total Value of Outstanding Bonds
Dillon	79	$ 47,926	5	$ 278,900
Bozeman	78	200,092		5,585,511
Billings	78	485,675		12,038,126
Butte	77	915	7	171,170
Polson	77	4,485	4	43,884
Missoula	78	365,110	101	3,286,500
Helena	79	257,944	56	8,090,074
Havre	79	58,987	24	901,833
County				
Cascade	79	24,057		
Stillwater	79	2,659		
Yellowstone	77	37,465		1,614,408
	79	48,910		
Missoula	77	76,770		2,505,662
	78	NA		2,491,934
	79	165,897	136	NA
Park	79	-0-		
	78		1	195,000
McCone	79	-0-		
Richland	77	7,500	1	52,700
Lewis & Clark	77	-0-		-0-
Madison	77	-0-		-0-

IV. STATUTORY PROVISIONS GOVERNING THE CREATION AND FUNDING OF SID's AND RSID's

Rural Improvement Districts (RSID's)*

A. Purpose

An RSID may be created "for the purpose of building, constructing, or acquiring by purchase devices intended to protect the safety of the public from open ditches, carrying irrigation or other water and maintaining sanitary and storm sewers, light systems, waterworks plants, sidewalks, and such other special improvements as may be petitioned for."

B. Where it may be created

RSID's may be created only in "thickly populated localities outside the limits of incorporated towns and cities." It may extend into more than one county.

C. Method of creation

A county governing body may create an RSID:

1) if it finds that "the public interest and convenience" require it; and

2) if 60% of the "freeholders affected thereby" petition for its creation; and

a) if one person owns all the affected property, his signature is sufficient; and

b) the 60% refers to the number of owners, not the property owned. If 60% own 1/4 of the property and a single owner holds the remainder, his refusal to sign does not necessarily block the creation of the RSID; and

3) by passing a resolution of intention to form the district, detailing the boundaries of the proposed district, the project to be undertaken, and its approximate cost; and

4) by promulgating notice of this resolution

a) public notice in a daily newspaper of general circulation for 10 consecutive days or in two issues of a weekly newspaper; and

b) post notice in 3 public places; and

---

*Sections 7-12-2101 through 7-12-2301.

c) mail notice to every real property owner in the district; and

5) by hearing of protests against creation of district; and

6) by passing a resolution creating the district.

D. Protests to Creation of District

Taxpayers can protest the creation of an RSID and its extension.

1) Extension of RSID

a) The county commissioners may extend a proposed district to property not fronting on the proposed improvement if the project

i) "in the opinion of the board of county commissioners, is of more than local or ordinary public benefit"; or

ii) would cost more than 1/2 the total assessed value of the land in the district.

b) Owners* in the proposed district may protest this extension within 15 days after publication of notice.

c) The county commissioners must hold a hearing on the protest.

d) The county commissioners may not extend the district for 6 months if the owners of more than 50% of the entire proposed extended district protest.

2) Creation of RSID

a) Owners in a proposed RSID district may protest its creation within 15 days after the notice of resolution of intent is passed.

b) The county commissioners must hold a hearing on the protests and may not approve its creation for 6 months if the owners of more than 50% of the area fronting the proposed district protest.

3) The county commissioners may, however, overrule these protests by a unanimous vote if the proposed project is the installation of sanitary sewers.

---

*Anyone owning fee, holding title, or executing acts of ownership, or a leaseholder.

E. Levy, assessment, and collection of special assessments to defray RSID costs

1) The county commissioners establish the special assessment of the taxable property in the district to repay the RSID project costs. Each parcel of land in the district is assessed on the proportion its area bears to the district's total. If the district is more than 5 miles outside city boundaries (and presumably not conveniently marked in blocks), the assessments may be calculated on assessed value.

2) They must publish notice of this levy and allow taxpayers the right to protest it for 5 days after its publication.

3) After a hearing on any protests, the board may modify the assessment.

4) The county commissioners must also levy a tax for the maintenance or repair of an RSID project annually on the property of the district. The commissioners may annually extend the boundaries of a maintenance district.

5) Special assessment taxes for RSID costs are collected in the same manner as general property taxes and placed in an RSID fund. Taxpayers may also protest the assessments in the same manner that property taxes are protested.

6) Special assessments for RSID's and for RSID maintenance are a lien against the property in the district. The lien can be extinguished only by payment of the assessments, penalties, cost, and interest.

F. Financing RSID's

1) County commissioners shall issue warrants or bonds to pay RSID costs.

2) These bonds must be repaid -- by taxes on the property -- within 30 years (or 40 years if federal loans are involved).

3) The county treasurer must create a separate district fund account to receive all special assessments from that district and from which bond payments are made.

4) The county commissioners must also create a revolving fund for the repayment of all RSID bonds or warrants outstanding in the county. The sources of funds for this revolving fund are:

a) loans from the county general fund (permissive);

b) loans from a county revolving fund generated by a levy on all the taxable property in the county, not to exceed (with the transfers) in any one year 5% of the principal outstanding on all RSID bonds and warrants in the county (mandatory).

5) Whenever the county makes a loan from the county revolving fund to a district fund, a lien is created against the land in the district on which the assessments are delinquent in the amount of the loan. The commissioners may foreclose on this lien when the bonds or warrants are repaid and the loan is still outstanding.

6) The county commissioners may agree to provide annual loans to a district revolving fund from the county general fund or from the county revolving fund for the life of the bond or warrant. These agreements may be binding for 30 or 40 years.

7) The commissioners may transfer any excess in the county revolving fund into the county general fund.

Special Improvement Districts (SID's)*

A. Purpose

An SID may be created to:

1) build and maintain devices to protect the public from open ditches;

2) build municipal swimming pools and other recreational facilities;

3) improve streets, alleys, or public ways;

4) construct and reconstruct sidewalks, crosswalks, culverts, bridges, curbs, gutters, parkings, sewer systems, waterworks, irrigation systems, fire protection devices, tunnels, dams, etc.; and

5) accomplish "any work...which shall be deemed necessary to improve the whole or any portion" of a city.

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*Sections 7-12-4101 through 7-12-4504.

B. Where it may be created

An SID may be created on any land within the boundaries of an incorporated city or town.

C. Method of creation

The governing body of a municipality may create an SID by:

1) finding that "the public interest and convenience may require" its creation; and

2) issuing a resolution of intention to create an SID "the public interest or convenience may require" [NO petition of affected citizens if required]; and

3) publish notice of this resolution, showing the district boundaries, proposed project, and approximate cost, in

a) a daily or weekly newspaper (5 times); or

b) posting notice in 3 public places; and

c) a copy mailed to each owner of real property in the district; and

4) holding a hearing on any protests received; and

5) issuing a resolution creating the special improvement district.

C. Extending a District

A municipal governing body may extend an SID if:

1) the proposed project is ", in the opinion of the council,...of more than local or ordinary public benefit"; or

2) the estimated cost of the project would exceed 1/5 of the total taxable value of the lots fronting the project.

E. Protests

1) Property owners in the proposed district (or the proposed extended district) may protest its creation within 15 days of the first notice of resolution to create the district.

2) The council may not create the district (or extend it) for 6 months if:

a) the owners of more than 50% of the property fronting the project protest; or

b) the owners of more than 50% of the property in the extended area protest.

3) The council may overrule these protests if:

a) the project is to pave a cross block to connect already paved streets; or

b) the project is for a sanitary sewer and the owners of less than 75% of the land protest and the council votes unanimously to overrule these protests. [If the owners of more than 75% of the land protest, the council may not overrule the protests.]

F. Creating a Maintenance District

The Council must assess the property in the district a sufficient amount annually to maintain the project. The council may change the boundaries of this district annually.

G. Levy, Assessment, and Collection of Taxes to Defray SID Costs

Same as for RSID's except:

1) The apportioning of special assessments may be calculated on area, frontage, or combined area and frontage.

2) Property owners may pay interest due on the bonds semi-annually rather than annually.

H. Financing SID's

1) The city or town council shall issue warrants or bonds to pay SID costs.

2) The bonds must be repaid - by taxes on the property - within 20 years.

3) The council must create a revolving fund for the repayment of all SID bonds or warrants outstanding.* The sources of funds for this revolving fund are:

a) loans from the city or town general fund (permissive);

---

*It may also create a supplemental revolving fund out of parking meter revenue to repay SID bond used for street projects. This creation of this revolving fund must be approved by the qualified electors of the city. Sections 7-12-4241 - 7-12-4258 contain specific provisions relating to this type of fund.

b) loans from the municipality revolving fund generated by a levy on all taxable property in the municipality, not to exceed in any one year 5% of the principal outstanding on all SID bonds and warrants outstanding in the county (mandatory); and

c) money in district funds that is not needed to make bond payments.

4) The council may agree to make loans to the SID for the entire life of the bond or warrant fund from:

a) the municipal SID revolving fund; or

b) the municipal general fund.

5) A loan from the municipal general fund or revolving fund creates a lien on the property in the district for the amount of the loan. This lien may not be enforced until the SID bond or warrants are repaid.

6) The municipality's governing body may transfer money in the revolving fund that it deems in excess of that necessary to pay or redeem bonds to the city's general fund or use these funds to purchase property in the district sold for delinquent assessments.

V. RECENT ATTORNEY GENERAL'S OPINIONS ON SID's AND RSID's

A. Thickly populated localities

In 1976, the Cascade County Attorney requested an opinion to clarify whether a rural special improvement district could be created for an area in which there were no inhabitants but which was adjacent to a densely populated area. Section 16-1601 (now renumbered 7-12-2102) allows the board of county commissioners to create RSID's in "thickly populated localities outside of the limits of incorporated towns and cities...."

Attorney General Woodahl held that

"the term 'thickly populated locality'...refers to the general area within and surrounding the proposed district, and is not restricted to the confines of the district. Contrary interpretation would make it almost impossible for the county commissioners to create such district as an incident to the development of new subdivisions, and would thwart the intent of the legislature in granting this authority...The board may proceed ...to create the district, even though there may be no inhabitants in the district itself."[15]

B. Raw land development

In 1979, the Missoula County Attorney raised a similar question: can a board of county commissioners create RSID's to fund improvements on underdeveloped and unoccupied parcels of land which are in the process of being subdivided for sales by a single developer? The county attorney was concerned about the creation of districts "which allow subdividers to finance improvements with little expenditure of their own capital and pass the costs along to the ultimate purchasers of the lots in the form of RSID assessments".

The Attorney General noted that RSID statutes were designed to protect two classes of citizens: 1) the taxpayers within the district who pay the assessments and receive the benefits of the improvement; and 2) the citizens of the county whose credit is pledged in support of the bonds. While acknowledging that "developers RSID's" may expose taxpayers to more potential financial liability than RSID's in developed areas, he found that county commissioners clearly had the administrative discretion to determine that "the public interest or convenience" required the creation of an RSID in an unoccupied area. Taxpayers outside the district were protected by the requirement that commissioners consider the public interest.

The Attorney General urged commissioners to exercise "great care in assuring that the public interest requires creation of a 'developer RSID'" but concluded:

> "Section 7-12-2102, MCA, allows the board of county commissioners to create RSID's to fund improvements on underdeveloped and unoccupied parcels of land, provided the proposed district lies within an area that is 'thickly populated'."[16]

NOTES

1. Act approved 10 March 1887 and compiled in statutes of 1887 as Chapter 22, 5th Division, Section 315-440.

2. Laws of 1889, p. 178.

3. Stadler et al. v. City of Helena, 46 Mont. 132 (1912).

4. Chapter 123, Laws of 1915.

5. House Bill 204, Laws of 1897, section 19.

6. Stanley v. Jeffries, 86 Mont. 114 (1929), p. 120.

7. Ibid.

8. Hansen v. City of Havre, 112 Mont. 207 (1941); Truax v. Town of Lima, 121 Mont. 152 (1948).

9. Chapter 188, Laws of 1957.

10. SB 270 and SB 299 of the 1979 Session. A.G. Opinion Vol. 38, Opinion No. 23 (28 June 1979).

11. A.G. Opinion, Vol. 38, No. 23.

12. Information from Don Dooley, Local Assistance Chief, DCA.

13. Calculated from material in DCA files.

14. Information from Don Dooley.

15. Vol. 36, Opinion No. 109 (30 November 1976).

16. Vol. 38, Opinion No. 23 (28 June 1979).

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0019

December 18, 1979

TO: Revenue Oversight Committee

FROM: Teresa Olcott Cohea

RE: Interest and penalty provisions in Title 15, Title 16, and Title 72

Attached, as members requested at the November meeting, are charts showing:

1) the various rates of interest paid by taxpayers for delinquent taxes;

2) the interest rates paid to taxpayers for overpayment of taxes; and

3) the penalties assessed for failure to file tax returns or pay taxes when due.

Interest rates for delinquent taxes and payments

As Table I shows, interest rates on delinquent taxes vary substantially - from 6% a year on certain inheritance taxes to 12% a year on many license taxes.

These variations result from the different interest rates prevailing at the time the taxes were enacted, how recently the statutes governing the taxes have been amended, and the economic pressures surrounding each tax. Interest rates for delinquent property taxes, for example, were lowered during the Depression from 12% to 8% per year. Interest rates for delinquent corporation license taxes were established at 12% a year in 1917, lowered to 6% a year in 1962, and raised to 9% a year in 1969.

Observers have voiced three concerns about these varying rates:

1) that the variation in rates is illogical and inequitable. Since coal producers, for example, pay property taxes, corporation income taxes, and coal severance taxes, why should the rates for delinquency on the taxes be, variously, 8%, 9%, and 12%?

2) the interest rates, which do not keep pace with inflation, are too low and may encourage citizens to invest tax payments rather than pay promptly.

The interest rates on most taxes have not been amended for many years:

Tax	Date of Last Amendment	Interest Rate
individual income tax	1969	9%
corporation license tax	1969	9%
property tax	1931	8%
inheritance tax	1923	10%

However, the interest rates offered on short-term investments have risen rapidly in recent years. In early December, offering in the Wall Street Journal quoted money market certificates at 11 1/2%, certificates of deposit at 12-14%, and treasury bills and notes at 11%-12%.[1]

Taxpayers may find an economic advantage in investing tax payments and incurring the penalty and interest payments. Some county treasurers note this is particularly true of property taxes, in which the owner has three years before a tax deed is issued on tax-delinquent property.[2] The owner can realize a profit by investing the tax payment in treasury notes and waiting until the end of the period to redeem the property by paying the 2% penalty and 8% annual interest. If large numbers of taxpayers choose this course, local governments could face severe cash-flow problems.

However, at present, the combination of penalty and interest on most license and severance taxes is still slightly higher than short-term investment returns. Delinquent coal severance tax, for example, is subject to an initial penalty of 10% of the total tax due and interest at the rate of 1% per month (12% per year). This is not true for two important revenue-producers: delinquent corporation license tax and individual income tax penalties are waived if the taxpayer can prove the delay was due to "reasonable cause" and the interest due is only 9%.

3) state and local governments lose possible revenue through low interest rates.

If interest rates were high enough to encourage prompt payment and return the "going rate" on taxes that were unavoidably overdue, the state could earn additional

revenue. If, for example, the interest rate on overdue individual income taxes had been 12% (the current federal rate) rather than the statutory 9%, the state might have realized $242,716 in addditional revenue during the period FY 74 - FY 79:

	Actual Interest Collected at 9%	Interest Collected at 12%
FY 74	$ 35,951	$ 47,814
FY 75	74,375	98,919
FY 76	85,769	114,073
FY 77	182,653	242,928
FY 78	183,420	243,949
FY 79	173,334	230,534
	$735,502	$978,217

A similar increase in corporation license tax interest rates could have produced an additional $1,017,607 over the five-year period:

	Actual Interest Collected at 9%	Interest Collected at 12%
FY 75	$ 697,560	$ 927,755
FY 76	516,524	686,977
FY 77	353,162	469,705
FY 78	429,640	571,421
FY 79	1,086,773	1,445,408
	$3,083,659[3]	$4,101,266

However, increased interest rates may actually decrease interest payments if they act as an incentive for prompt filing.

Interest rates on taxes returned to taxpayers

The interest rate paid to taxpayers if they overpay a tax is less than the interest due on delinquent taxes. For example, the interest due on delinquent individual income taxes is 9% per year, but the interest paid the taxpayer for income tax overpayments is 6% per year.*

The interest rate on protested taxes returned to the taxpayer may, however, be greater than the interest rate on delinquent

*Interest on overpayments does not begin to accrue for six months after the due date of the tax or the date the return is filed, whichever is later.

taxes, since statute requires that interest accrue on any tax or fee paid under protest "at the rate currently paid on short-term interest-bearing time deposits in the county or 5% a year, whichever is greater". Some county treasurers invest protested property taxes in certificates of deposit paying 9%-11%, which is higher than the 8% interest rate for delinquent property taxes. Other treasurers deposit the funds in bank savings accounts paying 5%-6% a year.[4]

Penalties

In addition to interest due on delinquent taxes, Montana statutes impose a penalty for failure to file a tax return or pay the tax due on the due date. Table III lists these penalties.

The penalties vary greatly in amount - from 2% of delinquent property tax to 25% of delinquent individual income tax if the taxpayer "purposely or knowingly" fails to pay the tax.*

These penalties vary in another way. The Department has statutory authority to waive most penalties for good cause. Penalties for delinquent individual income tax and corporation license tax are waived, for example, if the taxpayer can show "reasonable cause". The Miscellaneous Tax Division waives the penalty if a new producer does not file his first required severance tax return but warns him the penalty will be imposed for further failure to file or pay the tax.[6] However, statutes do not allow penalties to be waived for delinquent property taxes.

Federal law

Sec. 6621 of the Internal Revenue Code requires the Secretary of the Treasury to establish the interest rate for delinquent federal income tax by October 15 of each year. The interest rate must be equal to 90% of the "average predominant prime rate quoted by commercial banks to large businesses, as determined by the Board of Governors of the Federal Reserve System," rounded to the nearest whole percentage. This rate is effective on February 1 of the next year and remains in effect for one year.

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*Section 15-30-321 establishes two rates of penalty and interest for failure to file returns and pay tax due:

a) if the taxpayer "without purposely or knowingly" fails to file a return - 5% penalty; fails to pay the tax - 10% penalty and 9% interest.
b) if the taxpayer "purposely or knowingly" fails to file a return or pay the tax - 25% penalty and 12% interest.

The second rate of penalty and interest are rarely imposed, since intent is difficult to prove.

TABLE I

INTEREST DUE ON DELINQUENT TAXES AND PAYMENTS

6% per year

Inheritance tax, if estate subject to necessary litigation or "other unavoidable cause of delay"

8% per year (2/3% a month)

Property taxes

9% per year

Individual income tax if unknowing violation
Individual income tax not paid during time when filing extension is granted
Corporation license tax

10% per year

County treasurer pays to state treasurer for tax money held longer than 5 days after due date
Inheritance tax, if not under litigation or subject to "other cause of delay"

12% per year (1% per month)

Individual income tax if knowing violation
Oil and gas severance tax
Metalliferous mines tax
Micaceous mineral mines tax
Coal severance tax
Resource indemnity tax
Electric energy producers' license tax
Telephone company license tax
Express company license tax
Freight line company license tax
Sleeping car company license tax
Coal retailers' license tax
Cement and gypsum producers' and importers' tax
Cement dealers' tax
Gasoline license tax
Special fuels license tax
Beer wholesalers' tax
Consumer counsel tax

Other

Delinquent SID payments - "Same interest and penalty as are or may be hereafter provided by the laws of the state of Montana for other delinquent taxes"

TABLE II

INTEREST PAID TO TAXPAYER

6% per year

Amount overpaid on corporation license tax
Amount overpaid on individual income tax

Other

Protested license fee or tax - "interest at the rate currently paid on short-term interest-bearing time deposits in the county or 5% a year, whichever is greater"

TABLE III

PENALTY DUE FOR VIOLATIONS OF TAX LAW

2% of tax outstanding

Delinquent property taxes

5% of tax outstanding

Unknowing failure to file income tax return

10% of tax outstanding

Unknowing failure to pay income tax on time
Failure to pay any of the following taxes on due date:

- corporation license tax
- coal severance tax
- oil or gas severance tax
- metalliferous mining license tax
- micaceous mineral mines tax
- resource indemnity interest tax
- electric energy producers license tax
- telephone company license tax
- express company license tax
- freight line company license tax
- sleeping car company license tax
- coal retailers license tax
- cement and gypsum producers and importers tax
- cement dealers tax
- gasoline license tax
- consumer counsel tax

$25

Filing fraudulent special fuel report with intent to evade tax
Failure to pay special fuels license tax on time ($25 or 10%, whichever is greater)

25% of tax outstanding

Knowing failure to file individual income tax return or pay tax on time

Other

$1,000-$10,000 for failure to file public contractor's license return

110% of store license fee if not paid within 30 days after due date

200% of store license fee if not paid within 30 days after due date

$100-$2,000 for violation of the provisions of the liquified petroleum gas tax

5%-25% of tax outstanding if brewer or wholesaler does not pay beer tax on time

5% of tax outstanding or $5 a day, whichever is greater for failure to pay cigarette tax

NOTES

1. Wall Street Journal, 7 December 1979.

2. Information from Mantz Hutchinson, Assistant Admiistrator, Property Tax Assessment Division.

3. Information from Alan Davis, Research Specialist, Research Division, Department of Revenue, 17 December 1979.

4. Information from Mantz Hutchinson, 18 December 1979.

5. Information from Jerry Foster, Administrator, Corporation Tax Division; Ken Morrison, Administrator, Income Tax Division; and Jim Madison, Administrator, Miscellaneous Tax Division, on 17 and 18 December 1979.

REVENUE OVERSIGHT COMMITTEE

MONTANA STATE LEGISLATURE

SENATOR JEAN TURNAGE, Chairman
REP. HERB HUENNEKENS, Vice Chairman

State Capitol, Room 138
Helena, Montana 59601
Phone 449-3064

March 6, 1980

TO: Members, Revenue Oversight Committee

FROM: Jim Oppedahl, Legislative Researcher

RE: Real Property Delinquencies

I

At the January 12 meeting of the Revenue Oversight Comittee, members asked for some research regarding real property tax delinquencies. Specifically, several members of the Committee expressed the concern that real property tax delinquencies were increasing rapidly because some taxpayers take advantage of the relatively low interest and penalty rates due on delinquent taxes when compared to current high bank interest rates.

II

Pages 5 through 10 present information compiled from County Treasurers' Annual Reports to the State Examiner and from phone calls to each County Treasurer.* Six counties were examined. Four of the counties were chosen for their relatively large tax collections. Broadwater and Prairie Counties were selected for their small, rural tax collection characteristics.

The six charts present real property collections and delinquencies for the selected counties for tax years 1972 through 1978. The delinquency information is current to May 31, 1979 -- the second half tax payment date for real property. County treasurers will not have meaningful delinquency rates for 1979 until after the cutoff date for paying the second half taxes of May 31, 1980.

Table I summarizes by county the average annual increase of real property taxes for collection and the average annual real property delinquencies.

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*In the tables on pages 5 through 10, an asterisk indicates that the information for that year was taken from the County Clerk's Annual Report to the State Examiner.

TABLE I

County	Average Annual Percentage Increase in Net Amount of Real Property Tax for Collection	Average Annual Percentage Increase in Real Property Delinquencies (May 31)
Broadwater	5%	16%
Cascade	5%	12%
Flathead	10%	15%*
Lewis & Clark	7%	25%
Prairie	6%	36%
Yellowstone	13%	32%

Table I indicates that, on the average, real property delinquencies in Cascade and Yellowstone Counties are increaseing two and a half times faster than the net amount of real property tax for collection; Broadwater and Lewis and Clark's tax delinquencies are increasing about 3 times as fast. Prairie County's tax delinquencies are increasing at 6 times the pace of collections. Flathead County's delinquency rate is somewhat harder to establish because of a bookkeeping change made between 1976 and 1977 that changed the handling of payments received in the mail after May 31 of each year. The bookkeeping change notwithstanding, delinquencies in Flathead County are increasing at a faster rate than taxes.

An important indication of the delinquency rate is presented in the top right hand column on each of the charts on pages 5 through 10. This percentage represents the real property delinquencies compared to the net amount of real property for collection in the county. Delinquencies expressed as a percentage of the net amount for collection are increasing in all six of the counties surveyed. While there are fluctuations in each of the charts, the general trend is for the percentage of delinquencies to increase 2 or 3 percentage points between 1972 and 1978. Again, Flathead's increase during 1977 and 1978 is due to bookkeeping changes.

In order to smooth out the Flathead delinquency rate and to indicate a more even delinquency rate for all of the counties surveyed, the June 1 through August 31 payments or delinquent taxes for each year

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*The Flathead figure does not include the 1977 or 1978 increase because of the bookkeeping change made between 1976 and 1977. The 15% figure therefore is conservative.

are presented at the bottom of each chart on pages 5 through 10. This 3-month period of delinquency payments should catch all unintentional late payments, problems with the May 31 cutoff reporting date, and people who just waited for a couple of weeks to pay because of cash flow problems. The bottom right hand column, therefore, should be the most accurate indication of real delinquency rates for real property collections.

Overall, while there have been fluctuations in the percentage of delinquencies compared to collections, the trend is upward by 2 to 3 percentage points over the 7-year period.

III

In conversations with County Treasurers during the above survey, all indicated that they felt that high interest rates elsewhere were causing taxpayers to delay paying their real property taxes and, in effect, borrow money from the county at a lower rate of interest. The treasurers also indicated that this aspect of delinquencies was just now beginning to be felt and that it will be even worse for the 1979 tax year - the last half of which is due May 31, 1980.

The chart below indicates the jumps in the prime lending rate over the past year. The prime in May of 1979 was between 11 and 12 percent. By November of 1979 the rate had climbed to about 13 1/2 percent. On March 4, 1980, the prime lending rate charged by the Chase Manhattan Bank hit 17 1/4 percent. Money market certificates, sold in denominations of $10,000 and up, will be sold beginning Thursday, March 6, 1980, by banks and savings associations carrying 14.792 percent interest. Should the trend continue, the second half real property tax payments in May 1980 may show another jump in delinquencies.

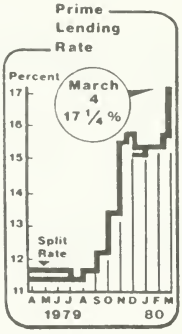

Chart shows the rise in the prime lending rate.

Finally, it must be pointed out that the charts on pages 5 through 10 show a trend toward a higher delinquency rate compared to the amount of taxes assigned to the treasurers for collection. However, the upward trend cannot be ascribed simply to taxpayers not paying taxes that they chose to invest somewhere else at interest rates that net them a profit after paying the 8% interest and 2 percent penalty charged by the county. Several other reasons for delinquent taxes were mentioned by county treasurers contacted in the survey. Stay orders by the State Tax Apeals Board were mentioned several times by treasurers as contributing to the increasing delinquency rate. Stayed rollback taxes were a specific example. Abatements were another contributing factor in some counties, as are legal questions with improvements on leased land, supplement taxes, and so forth. The increasing tax burden was mentioned by several county treasurers as contributing to delinquencies; the sheer lack of cash certainly contributes to a part of the delinquencies.

In summary, from the six-county survey, it seems safe to say that the percentage of delinquencies has been rising since 1972. The exact reason for the rise is open to speculation. Only confidential interviews with specific taxpayers would seem to offer an exact answer to what forces are most important in causing the current rate of delinquencies.

JO:ee

COUNTY: BROADWATER

For the Tax Year	Net Amount of Real Property for Collection	% Increase (Decrease) From Previous Year	Real Property Delinquencies 1st & 2nd Halves	% Increase (Decrease) From Previous Year	% of Delin as of May to Net Amt For Collectio
1978	$1,052,882	3%	$76,606	15%	7.27%
1977	1,019,786	6%	66,599	57%	6.53%
1977	965,688	(1%)	42,494	(15%)	4.40%
1975	975,286	19%	50,219	(31%)	5.15%
1974	820,927	(7%)	72,630	118%	8.84%
1973*	883,635	15%	33,264	(8%)	3.76%
1972	770,222	--	36,246	--	4.70%

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For the Tax Year	Delinquent Taxes Collected Between June 1 and Aug. 31	% of Delinquencies As of Aug. 31 Compared to Net Amount for Collection
1978	$18,203	5.54%
1977	10,513	5.49%
1976	12,576	3.09%
1975	18,591	3.24%
1974	12,152	7.36%
1973	11,397	2.47%
1972	13,099	3.00%

COUNTY: CASCADE

For the Tax Year	Net Amount of Real Property for Collection	% Increase (Decrease) From Previous Year	Real Property Delinquencies 1st & 2nd Halves	% Increase (Decrease) From Previous Year	% of Delinq. as of May 31 to Net Amt. For Collection
1978	$21,676,815	2%	$1,272,972	56%	5.87%
1977	21,204,005	12%	814,190	15%	3.83%
1976	18,906,658	1%	710,943	(8%)	3.76%
1975	18,734,883	10%	775,452	(4%)	4.13%
1974	17,048,148	2%	804,632	19%	4.71%
1973*	16,638,486	4%	674,275	(3%)	4.05%
1972	15,940,638	--	695,988	--	4.36%

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For the Tax Year	Delinquent Taxes Collected Between June 1 and Aug. 31	% of Delinquencies as of Aug. 31 Compared to Net Amount for Collection
1978	$244,608	4.74%
1977	119,112	3.27%
1976	157,498	2.92%
1975	202,150	3.06%
1974	219,991	3.42%
1973	174,941	3.00%
1972	150,636	3.42%

COUNTY: FLATHEAD

For the Tax Year	Net Amount of Real Property for Collection	% Increase (Decrease) From Previous Year	Real Property Delinquencies 1st & 2nd Halves	% Increase (Decrease) From Previous Year	$ of Delinc as of May 3 to Net Amt. For Collection
1978	$15,163,185	21%	$3,051,039	63%*	20.12%*
1977	12,557,503	13%	1,872,516	181%*	14.91%*
1976	11,137,642	6%	665,429	(5%)	5.97%
1975	10,463,483	9%	702,813	35%	6.71%
1974	9,624,599	2%	520,789	(1%)	5.41%
1973	9,407,074	6%	525,737	46%	5.58%
1972	8,916,048	--	359,875	--	4.44%

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For the Tax Year	Delinquent Taxes Collected Between June 1 and Aug. 31	% of Delinquencies as of Aug. 31 Compared to Net Amount for Collection
1978	$2,263,237	5.19%
1977	1,371,783	3.98%
1976	193,502	4.23%
1975	191,067	4.89%
1974	139,478	3.96%
1973	139,993	4.10%
1972	121,233	2.67%

*The Flathead figures for 1977 and 1978 are due to a bookkeeping change. The more accurate summary of conditions in Flathead County are indicated in the lower right-hand column of this page.

COUNTY: LEWIS & CLARK

For the Tax Year	Net Amount of Real Property for Collection	% Increase (Decrease) From Previous Year	Real Property Delinquencies 1st & 2nd Halves	% Increase (Decrease) From Previous Year	% of Delinq. as of May 31 to Net Amt. For Collection
1978	$13,269,749	6%	$806,532	28%	6.07%
1977	12,532,652	16%	629,734	25%	5.02%
1976	10,829,919	2%	505,007	15%	4.66%
1975	10,584,043	12%	439,965	24%	4.15%
1974*	9,472,766	3%	354,923	10%	3.74%
1973	9,152,471	4%	322,058	9%	3.51%
1972	8,834,979	--	295,604	--	3.34%

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For the Tax Year	Delinquent Taxes Collected Between June 1 and Aug. 31	% Delinquencies as of Aug. 31 Compared to Net Amount for Collection
1978	$192,332	4.62%
1977	198,136	3.44%
1976	178,181	3.01%
1975	124,861	2.97%
1974	131,859	2.35%
1973	100,675	2.41%
1972	65,909	2.59%

COUNTY: PRAIRIE

For the Tax Year	Net Amount of Real Property for Collection	% Increase (Decrease) From Previous Year	Real Property Delinquencies 1st & 2nd Halves	% Increase (Decrease) From Previous Year	% of Delinc as of May 3 to Net Amt. For Collectior
1978	$982,985	4%	$70,087	29%	7.13%
1977	944,886	2%	54,394	79%	5.75%
1976	923,060	7%	30,432	5%	3.29%
1975	864,022	2%	28,922	45%	3.34%
1974	844,446	1%	19,947	12%	2.36%
1973	832,864	18%	17,778	(10%)	2.13%
1972	708,129	--	19,761	--	2.79%

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For the Tax Year	Delinquent Taxes Collected Between June 1 and Aug. 31	% Delinquencies as of Aug. 31 Compared to Net Amount for Collection
1978	$10,031	6.10%
1977	11,065	4.58%
1976	3,165	2.95%
1975	10,534	2.12%
1974	3,228	1.97%
1973	1,460	1.95%
1972	5,603	1.99%

COUNTY: YELLOWSTONE

For the Tax Year	Net Amount of Real Property for Collection	% Increase (Decrease) From Previous Year	Real Property Delinquencies 1st & 2nd Halves	% Increase (Decrease) From Previous Year	% of Delinq. as of May 31 to Net Amt. For Collection
1978	$38,268,175	15%	$2,774,593	56%	7.25%
1977	33,291,233	14%	1,772,978	(9%)	5.32%
1976	29,131,237	(4%)	1,950,630	4%	6.69%
1975	30,425,204	23%	1,867,521	34%	6.13%
1974	24,744,171	9%	1,392,772	55%	5.62%
1973	22,792,659	12%	900,514	4%	3.95%
1972	20,363,612	--	862,623	--	4.23%

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For the Tax Year	Delinquent Taxes Collected Between June 1 and Aug. 31	% of Delinquencies as of Aug. 31 Compared to Net Amount for Collection
1978	$854,654	5.01%
1977	460,220	3.94%
1976	503,232	4.96%
1975	577,311	4.24%
1974	383,563	4.07%
1973	252,213	2.84%
1972	278,900	2.86%

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0038

April 30, 1980

TO: Revenue Oversight Committee

FROM: Jim Oppedahl, Staff Researcher

RE: Elimination of Inheritance Tax to Children

At the March 8, 1980 meeting of the Revenue Oversight Committee, Senator Turnage asked for research to examine the cost of eliminating inheritance taxation to children. The Committee conducted a general discussion of this issue and agreed that preliminary research would be necessary to establish the general cost of such an idea.

The last major study on inheritance taxation in Montana was done by the Subcommittee on Taxation during the 1976 interim. During the course of that study the Subcommittee considered a variety of death taxes, including different types of estate taxes and amendments to existing inheritance tax laws. Generally, Montana's inheritance tax laws remained virtually unchanged from 1923 to 1977. In the 1977 session, the Legislature increased all exemptions. The surviving spouse exemption went from $25,000 to $40,000, and one-half of the distributive share to the spouse was exempt. The exemptions for all of the other classes of inheritors were also substantially increased. The other major changes in the 1977 session were to change the actual computation of the tax law and to change the Joint Tenancy Law.

In the 1979 session, the surviving spouse was eliminated altogether from the inheritance tax. The session also changed the Joint Tenancy laws in the area of children and grandchildren to provide more equal reduction in the tax, and the session adopted the federal special use valuation laws.

Changes in Montana's inheritance tax laws during the last several sessions have created some difficulties in estimating or computing the effect of eliminating inheritance taxation to children and grandchildren. There is no stable base now to project from, partly because the inheritance tax material is not computerized at the present time Also, there is a good deal of lag time between someone's death

and the collection of an inheritance tax. The date of death determines what law a person comes under; even then a person has 18 months to pay an inheritance tax with no penalty or interest during those 18 months. If the tax is paid within the 18 months, there is a 5% discount. Lag time in computing inheritance tax can also be fairly substantial if litigation is involved. Due to some of these factors, current collections do not completely reflect the changes made in 1979. The following chart presents the historic collections of inheritance taxes from 1965 to 1980 (to date March 31, 1980).

INHERITANCE TAXES AS A SOURCE OF REVENUE

Year	Revenue Produced (000)	% of Total State Revenue
1965	$2,504	4.3
1966	2,750	4.3
1967	2,790	4.0
1968	2,976	3.7
1969	3,879	3.6
1970	4,233	4.5
1971	3,645	3.6
1972	4,234	3.3
1973	4,457	3.2
1974	5,660	3.4
1975	5,395	3.3
1976	6,180	3.7
1977	6,369	3.4
1978	6,304	---
1979	6,442	---
1980 (to March 31)	5,445	---

According to Tom Stoll, the Administrator of the Inheritance Tax Division of the Department of Revenue, several estimates can be made of the effect of eliminating inheritance taxation to children and grandchildren. It should be noted, however, that this information is only an estimate. Actual figures on the effects of eliminating inheritance taxation to children and grandchildren would have to come from a survey of data from a selected month of collections in order to determine the amount of taxes that are actually paid by children and grandchildren in Montana. Since inheritance tax information is confidential, it would probably be necessary to have the survey done by Revenue personnel.

Mr. Stoll estimates from his experience in dealing with inheritance taxation that 70% to 75% of property that comes under the current inheritance tax laws of Montana actually passes to children and grandchildren. However, while children and grandchildren may receive

70% to 75% of the property, they only pay about 60% of the total taxes collected under the inheritance tax laws of the state of Montana.

According to this estimate, eliminating inheritance taxation to children and grandchildren in Montana would probably represent a 60% reduction in collections -- or approximately $3.8 million annual loss, based upon the 1979 collections of $6.4 million.

JO:ee

ADDENDUM

At the November 15, 1980 meeting of the Revenue Oversight Committee, Mr. Thomas Stoll revised his estimate of the cost of eliminating inheritance taxation to lineal descendants. He explained that his earlier calculations had not taken into account the operation of the Montana estate tax which is imposed upon estates with Federal estate tax exposure. The Montana estate tax therefore operates by imposing a tax upon inheritance in order to claim for Montana the maximum credit allowed by federal law.

Because of the operation of the Montana estate tax, Mr. Stoll's revised estimated of the cost of eliminating inheritance taxation to lineal descendants is estimated at $2 million if such an exemption had been in effect during fiscal 1980.

REVENUE OVERSIGHT COMMITTEE

MONTANA STATE LEGISLATURE

SENATOR JEAN TURNAGE, Chairman
REP. HERB HUENNEKENS, Vice Chairman

State Capitol, Room 138
Helena, Montana 59601
Phone 449-3064

September 12, 1980

TO: Members, Revenue Oversight Committee

FROM: Jim Oppedahl, Staff Researcher

RE: Cigarette Tax Information

I

At the last meeting of the Revenue Oversight Committee, members asked for a summary of the recent United States Supreme Court decision regarding cigarette taxation of Indians in Washington. The case is State of Washington et al., Appellants, v. Confederated Tribes of the Colville Indian Reservation et al., State of Washington v. United States et al. The case was on appeal from United States District Court for the Eastern District of Washington and concerned the challenge by several Indian tribes to efforts by the State of Washington to apply various state taxes and other laws to transactions and activities occurring on Indian reservations.

II

Washington imposes a cigarette excise tax of $1.60 per carton on the "sale, use, consumption, handling, possession or distribution" of cigarettes within the State. In addition, the state levies a general retail sales tax on sales of personal property, including cigarettes. In the court action the state sought to compel Indian retailers to collect both taxes with respect to cigarette sales to non-Indians and the sales tax with respect to sales of other goods. A number of other issues were involved in the case, including motor vehicle excise tax and mobile home, camper, and trailer taxes.

The three-judge United States District Court for the Eastern District of Washington held in its decision that the cigarette tax could not be applied to on-reservation transactions because it was preempted by tribal taxing ordinances and constituted an impermissible interference with tribal government. In addition it held that the retail sales tax could not be applied to tribal cigarette sales and that the state could not impose certain

record-keeping requirements on the tribes in connection with various tax-exempt sales. The court enjoined enforcement of the statutes that it had invalidated.

On appeal the United States Supreme Court held that the imposition of Washington's cigarette and sales taxes on on-reservation purchases by non-members of the tribes is valid. In making its decision the Court argued that while the tribes have the power to impose cigarette taxes on non-tribal purchases, the tribes' involvement in the operation and taxation of cigarette marketing on the reservation does not oust the state from any power to exact its sales and cigarette taxes from non-members purchasing cigarettes at tribal smokeshops. In the words of the Court, it did "not believe that principles of federal Indian law, whether stated in terms of preemption, tribal self-government, or otherwise, authorize Indian tribes thus to market an exemption from state taxation to persons who would normally do their business elsewhere."

Contrary to the holdings of the lower court, the Supreme Court found that Washington State's record-keeping requirements regarding cigarette taxation were valid in toto. The Court held that the tribes--not the State of Washington--bear the burden of showing that the record-keeping requirements that they challenged were invalid. Washington's sales tax scheme requires that smokeshop operators keep detailed records of both taxable and nontaxable transactions. The operator must record the number and dollar volume of taxable sales to non-members of the tribe. With respect to nontaxable sales, the operator is required to record and retain for state inspection the names of all Indian purchasers, their tribal affiliations, the Indian reservations within which sales are made, and the dollar amount and date of the sales. The state's record-keeping requirement also imposes the requirement that unless the Indian purchaser is personally known to the smokeshop operator, he must present a tribal identification card.

In the appeal the State of Washington also asserted its power to apply its sales and cigarette taxes to Indians resident on the reservation but not enrolled members of the tribe. The Supreme Court found that the state's interest in taxing non-tribal purchasers outweighed any tribal interest in preventing the state from imposing its taxes.

Finally, the State contended that it had the power to seize unstamped cigarettes as contraband if the tribes did not cooperate in collecting the State's taxes. The Court found that Washington State's interest in enforcing its valid taxes was sufficient to justify such seizures. It noted, "although the cigarettes in transit are as yet exempt from state taxation, they are not

immune from seizure when the tribes, as here, have refused to fulfill collection and remittance obligations which the state has validly imposed."

III

Mr. Dan Breard, Administrator, Miscellaneous Tax Division for the State of Washington, indicated last week that Washington is still waiting for the lower court to remove its injunction; therefore, until the injunction is removed the current status of the Supreme Court decision is in limbo. Mr. Breard indicated that once the injunction is removed the state will take steps to ensure that cigarette taxes are assessed and collection procedures followed.

The taxation and collection procedures in Washington, supported by the Supreme Court decision, will place the Washington State Department of Revenue in a clearinghouse-type function. The Department allows a monthly quota of cigarettes to be bought tax-free by enrolled tribal members on a reservation. Once the quota is reached the state will not allow unstamped sales to anyone on that reservation.

Licensed distributors must have pre-approval for tax-exempt sales from the Department of Revenue in Washington prior to selling cigarettes without the tax stamp. Mr. Breard pointed out that out-of-state licensed distributors should be aware of the pre-approval process for tax-exempt sales within Washington. He indicated that those who did not receive prior approval would face legal action by his Department.

IV

Montana's cigarette tax is imposed on all cigarettes sold or possessed for sale in the state and is a direct tax on the retail consumer, precollected for purposes of convenience only (16-11-112, MCA). This differs from the Washington cigarette tax which is levied on cigarettes sold, used, consumed, handled, possessed or distributed in Washington, and is to be paid by the first person performing any of such acts (Sections 28A.47.440, 73.32.130, 82.24.929, 82.24.080, Codes of Washington).

The Montana tax rate is 12 cents on each package containing not more than 20 cigarettes or 12 cents on each multiple of 20 or fraction thereafter. The chart on page 6 shows the rate of taxation and the distribution of the cigarette tax collections.

Licensed wholesalers and retailers are allowed an 8% discount from the face value of the insignia purchased from the Department

of Revenue. The tax insignia must be affixed to the cigarettes within 72 hours after receipt by the distributor or dealer in any cigarettes, except that cigarettes can be sold to a "resident or non-resident person, wholesaler, subjobber, or retailer who signs a receipt of purchase for any cigarettes evidencing that he is exempt from state cigarette taxation provisions" (16-11-132 and 16-11-133, MCA).

According to the Department of Revenue, their best estimate of cigarette tax loss to the State of Montana due to Indian sales of untaxed cigarettes is as follows: [1]

1972	$133,426.66	(8 months)
1973	425,667.82	(12 months)
1974	325,048.17	"
1975	360,987.83	"
1976	366,575.36	"
1977	456,311.30	"
1978	435,763.29	"
1979	365,628.80	"

It should be noted that the Department's figures include all cigarette sales by licensed distributors that do not have the tax stamp affixed. Therefore the tax loss is overstated to the extent that it has included tax-exempt cigarette sales to Indians--who would not owe the tax in any case. However, the tax loss does represent a general outline of lost revenue to the State of Montana due to non-stamped cigarette sales.

The Department of Revenue is currently in the process of visiting all of the tribes in Montana and seeking formal agreements to ensure the collection of cigarette taxes for non-Indian cigarette sales. The Department has proposed and adopted amendments to the current administrative rule regarding cigarette tax refunds. The adopted amendment allows tax refunds to be made to an Indian tribe pursuant to a formal agreement between the tribe and the Department of Revenue. The agreements that the Department has in the discussion state contemplate the collection and remittance of the cigarette

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[1] Letter, James Madison, Administrator, Miscellaneous Tax Division, to John C. Cochrane, dated August 5, 1980.

tax on all purchases but will provide a refund to the tribes based on the number of tax-exempt purchasers and other statistics on average cigarette consumption.

The Montana refund scheme differs from Washington's quota system. The Montana method would eliminate throughout the state unstamped cigarettes and thereby eliminate any kind of confusion regarding that item. There would be no unstamped cigarettes sold in Montana; the Department would not act, as does the Washington State Department of Revenue, as a clearinghouse for unstamped cigarette sales.

Please contact me at 449-3064 if I can be of any further assistance.

JO:hhb

DISTRIBUTION OF CIGARETTE TAX COLLECTIONS

		General Fund	Long Range Building Program Account	
			Sinking Fund	Bond Proceeds and Insurance Clearance Fund
Section 84-5606, Subdivision (2)	9¢			
50% x 9¢		.045		
15% x 9¢			.0135	
35% x 9¢				.0315
Section 84-5606, Subdivision(3)	2¢		.02	
Section 84-5606, Subdivision(4)	1¢		.01	
TOTALS	12¢	.045	.0435	.0315
Less: Discount allowed wholesalers for affixing insignia - 8% x .045		.0036		
Net Tax to General Fund		.0414		

16-11-101. Legislative intent. The legislature hereby declares that its intent in enacting 16-11-111 is to enable those who are subject to the taxes imposed by the federal tax laws to avail themselves of the deductions respecting state and local taxes specified in section 164 of the federal Internal Revenue Code of 1954 in computing their taxable income.

16-11-112. Tax on ultimate consumer. All taxes paid pursuant to 16-11-111 shall be conclusively presumed to be direct taxes on the retail consumer precollected for the purpose of convenience and facility only. The full face value of the insignia or tax shall be added to the cost of the cigarettes and recovered from the ultimate consumer or user. When the tax is paid by any other person, such payment shall be considered as an advance payment and shall be added to the price of the cigarettes and recovered from the ultimate consumer or user. Any person selling cigarettes at retail shall state or separately display in the licensed premises a notice of the tax included in the selling price and charged or payable pursuant to this section. The provisions of this section shall in no way affect the method of collection of such tax.

16-11-132. Unlawful to sell cigarettes without valid license — exceptions. (1) No person shall sell, offer to sell, or possess with intent to sell any cigarettes, at wholesale or retail, unless his license is current and valid under the provisions of this part.

(2) No person shall sell, offer to sell, or possess with intent to sell any cigarettes, at wholesale or retail, to a resident or nonresident wholesaler, subjobber, or retailer who is not licensed under this part or who is not licensed by the state in which he sells, offers to sell, or intends to sell cigarettes, except that a resident wholesaler, resident subjobber, or retailer licensed under the provisions of this chapter may sell cigarettes to a resident or nonresident person, wholesaler, subjobber, or retailer not licensed under this chapter if:

(a) such resident or nonresident person, wholesaler, subjobber, or retailer is exempt from state cigarette taxation provisions;

(b) such resident or nonresident person, wholesaler, subjobber, or retailer furnishes documentary evidence that he is exempt from state cigarette taxation provisions; and

(c) such resident or nonresident person, wholesaler, subjobber, or retailer signs a receipt of purchase for any cigarettes evidencing that he is exempt from state cigarette taxation provisions.

(3) Any person violating the provisions of this section is guilty of a misdemeanor and shall be punished as hereinafter provided, and all cigarettes in his possession shall be seized and forfeited to the state.

16-11-133. Sale and use of cigarettes without insignia unlawful. Every person who sells any package of cigarettes which does not bear the insignia required by this part and every person who uses or consumes a cigarette within this state, taken from a package which does not bear the required insignia, is guilty of a misdemeanor and shall be punished as hereinafter provided, except that a person specifically exempted under the provisions of 16-11-132(2) may not be considered to be acting unlawfully under this section.

REVENUE OVERSIGHT COMMITTEE
MONTANA STATE LEGISLATURE

SENATOR JEAN TURNAGE, Chairmen
REP. HERB HUENNEKENS, Vice Chairman

State Capitol, Room 138
Helena, Montana 59601
Phone 449-3064

September 16, 1980

TO: Revenue Oversight Committee

FROM: Jim Oppedahl, Staff Researcher

RE: Oil and Gas Information

I.

At the last meeting of the Revenue Oversight Committee, the members discussed the idea of a natural resource impact board and decided that they would like to have information on crude oil and natural gas production in the Sidney and Richland County area. The Committee also asked for mill levy and valuation statistics from Colstrip high school and elementary districts and the Forsyth high school and elementary districts, in order to see the impact of coal board grants in those two jurisdictions.

The following information is restricted to county, city, or school district information and should in no way be seen as an overall picture of natural resource development impacts--either throughout Richland County or throughout the state. The information presented does not examine revenue from such sources as user fees, federal grants, or general obligation bonds. For the purposes of this report, the discussion of impacts has been limited to governmental impacts and may well demand more extensive examination of county, city, and school district budgets.

II.

The charts on pages 5 through 6 present a general picture of crude oil and natural gas production in Richland County for fiscal years 1971 through 1980. The charts also present the taxable value of the oil and gas in the same county.

Production of crude oil in Richland County has doubled in the ten year period under examination, while the taxable value of that oil has gone from over four million dollars in 1971 to nearly forty-eight million dollars in 1980. The production of gas has gone from under a million MCF to about a 1.8 million MCF in the ten year period. The taxable value of the gas has fluctuated from zero in fiscal year 1971 to approximately ninety-one thousand dollars in FY 1980.

The chart on page 7 shows the taxable value of Richland County, Sidney high school and elementary districts, and the City of Sidney. The next chart, on page 8, presents the mill levies in total mills for the same jurisdictions.

In examining both charts, one can see that the taxable value generally has shot up for Richland County--followed by the taxable value of the high school--and a bit slower, the elementary district.

The City of Sidney's taxable value remained fairly constant over the ten year period with a moderate increase from FY 1980 to FY 1981.

Mill levies have gone down in Richland County as the value of the mill has gone up and remained relatively constant in the school districts. Sidney, on the other hand, has experienced a slight increase over the ten year period in its taxable value and a significant increase-particularly from FY 1976 to FY 1980 in its mill levy.

The ten year increase in Richland County property taxation, when looking only at mill levy generated revenues, has been about 137 percent. The statewide average was 117 percent. The City of Sidney's ten year increase in property taxation has been approximately 105 percent, compared to 111 percent for the statewide average.

When one considers the tax base or the total taxable value of the four jurisdictions presented in the charts, one finds a ten year increase in the county's tax base of 166 percent, while the city's increase is only 34 percent. In Sidney high school district No. 5, the increased taxable value has gone up over the ten year period approximately 350 percent. The elementary district's increase is approximately 190 percent.

The chart on page 9 shows the Sidney public schools average number belonging (ANB) for elementary district No. 5 and high school district No. 1. The elementary district ANB for Sidney elementary district No. 5 has dropped from a high of 1,326 in FY 1972 to a low of 1,026 in FY 1978. Since then it has gone back up to 1,092 for FY 1981. The largest

drop occurred in FY 1974 when the method for calculating ANB for Special Education changed. Most schools experienced a similar drop in calculated ANB. Since FY 1978, the enrollment has begun to increase slowly. Sidney high school district No. 1 has experienced a general decline in ANB over the ten year period. However, the decline is probably not out of line with the statewide enrollment decline during the period.

The charts on pages 10 and 11 present census information unemployment rate information for Richland and Sidney. These two pieces of information help round out the general picture of the economic and populatio status of those jurisdictions. While the population of Richland County remained steady from 1950 to 1960 and declined some from 1960 to 1970, population in the last ten years has increased about eleven percent.

One of the more significant pieces of census information, however, is the number of total households in the county and the average number of people in each household. As you can see on the chart, the average number has declined from 3.2 persons per household in 1970, to 2.5 persons per household in 1980. According to planners in Richland County, these statistics have a significant impact on the amount of services demanded by the public.

The census information for Sidney presented on page 10 represents a fourteen percent increase in population for the city from 1950 to 1960, and a twenty-three percentage increase from 1970 to 1980. It should be noted, however, that the 1980 census figure being used on the chart is only the review figure given in June of 1980. The preliminary census figures for Sidney should be available sometime this week. The county planner in Richland County indicated that the review figure would go up by at least two to four hundred people due to boundary mistakes made in the census process. If the figure goes up to six thousand, the 1970 to 1980 increase will have been 31 percent.

III.

The following is a brief summary of testimony presented to the Senate Taxation Committee regarding Sen. Thiessen's SB 182 in the 1979 Session. The Mayor of Sidney, Ben G. Nordell, asked for support of SB 182 for a number of reasons. He cited population growth as a significant impact on demand for Sidney governmental services. The Mayor also indicated that the city had recently purchased a new truck at a cost of $115,000, a new garbage system at a cost of $132,000, and had experienced an increase in expenditures for the police force. The Mayor attributed the expenditures and increased costs to oil and gas impact.

While he admitted that there were substantial amounts of benefits related to oil, he pointed out that the city had a difficult time competing for workers and could not pay a salary to city government workers comparable to that which could be earned in the oil fields. As an example, he cited the new garbage system. The city purchased

the system because it was highly mechanized and thus required less personnel.

The Mayor cited "a feeling by the community of Sidney that the basic income provided by the energy impact in terms of dollars is going to the government of the county rather than to the government of the towns where most of the growing pains are being felt." While the Mayor recognized that the county also had restrictions in these areas, he argued that the primary problems concerned with the energy impact seemed "to be more heavily centered in the communities...". One of the problems he noted in his community was the general concern by residents that now is a time to cut back on government taxation and spending. He cited an inability in the city to pass bond issues due to a "feeling by some people in the community that all ...additions relate to the oil, and since they do not benefit directly, they are not willing to pay the necessary taxes."

Harold L. Mercer, Director of Public Works for Sidney, testified before the Committee that the population growth was causing a number of problems within the city. The main concern was that the sewer lines were not large enough to handle the additional growth. Mr. Mercer also cited the pressure on the landfill and the neccessity of purchasing new land because of the growth. Mr. Mercer explained the pressures on the police department and particularly on the fire department -- now volunteer. He noted that the city's growth may force a partly paid department instead of a totally volunteer fire department.

IV.

The Committee also asked for information on Coal Board grants given to Colstrip high school and elementary districts No. 19 and Forsyth high school and elementary districts. The information presented in the charts on pages 12 and 13 is organized by taxation information, enrollment (ANB), bonded indebtedness, and finally, grants awarded to the elementary and high school districts in the respective towns to date.

Colstrip elementary school district has received approximately $863,000 in Coal Board grants, while the high school has received approximately $482,000. (The most recent grants by the Coal Board of $1.5 and $1.4 million to the elementary and high school districts in Colstrip for construction are not considered here since the grants are for future construction.)

The total grants for Forsyth elementary school are approximately $2,728,000. The high school has received Coal Board grants in the amount of $318,000. One mill in the Colstrip elementary district raises approximately $48,000, while one mill on the high school district raises $50,000.

In Forsyth one mill raises approximately $12,000 in the high school district, while the elementary school district mill raises $5,600.

Please contact me at 449-3064 if I can provide any further information.

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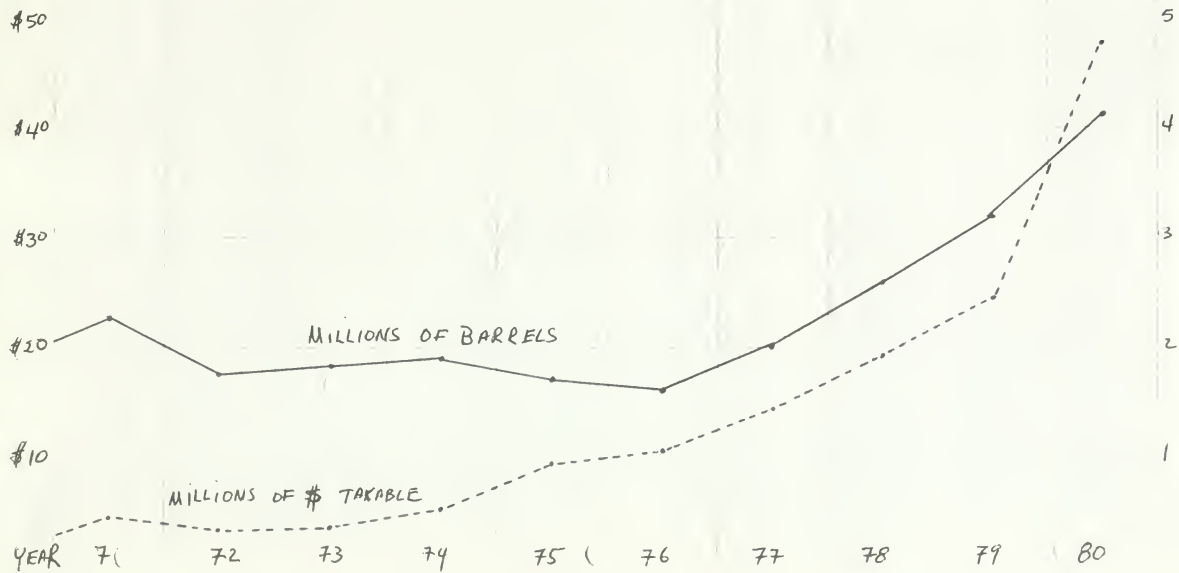
RICHLAND COUNTY: CRUDE OIL



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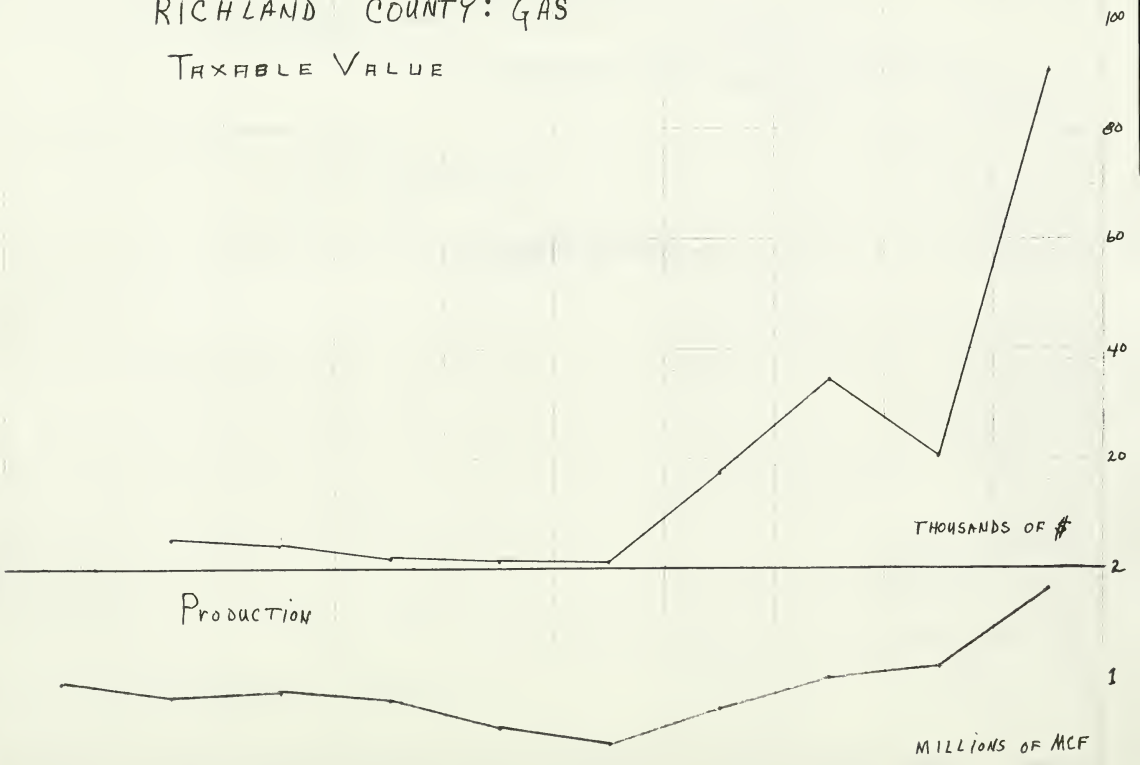
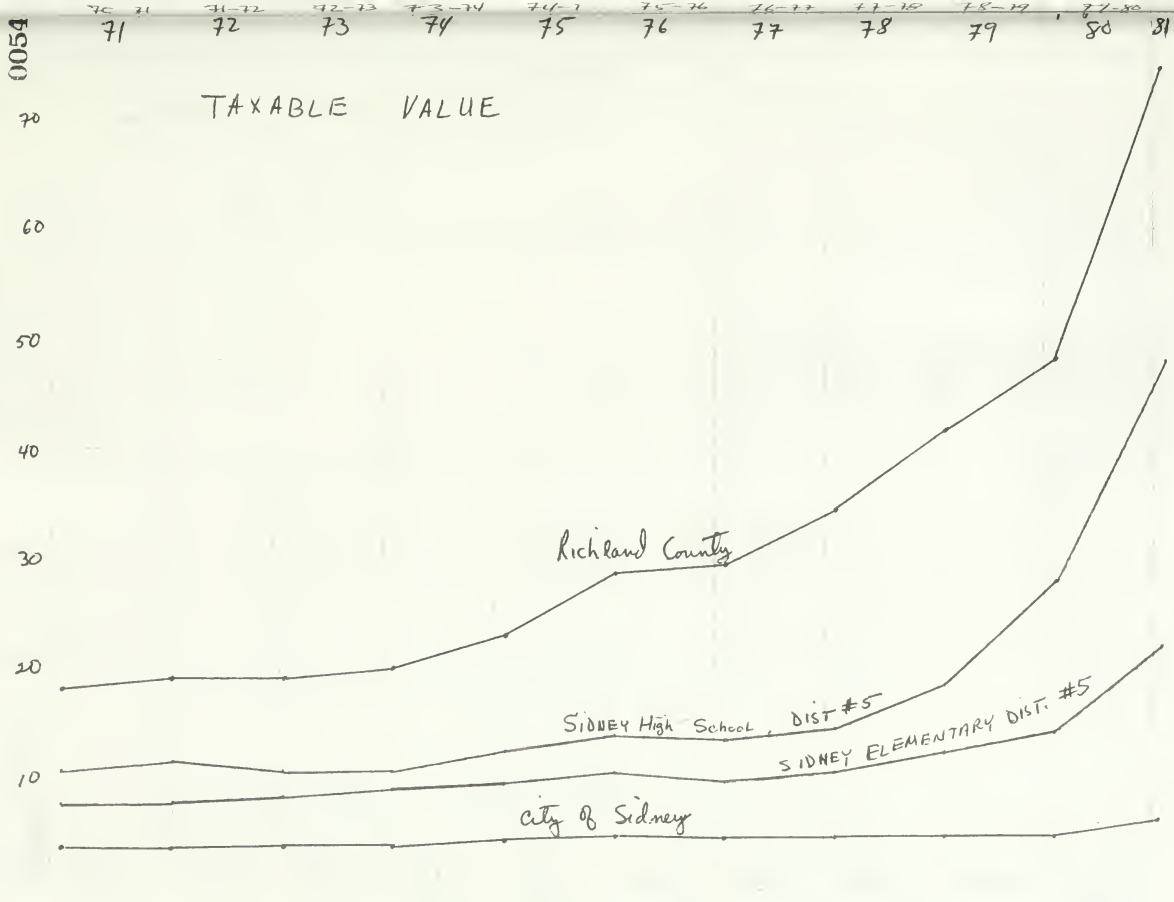
RICHLAND COUNTY: GAS

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TAXABLE VALUE
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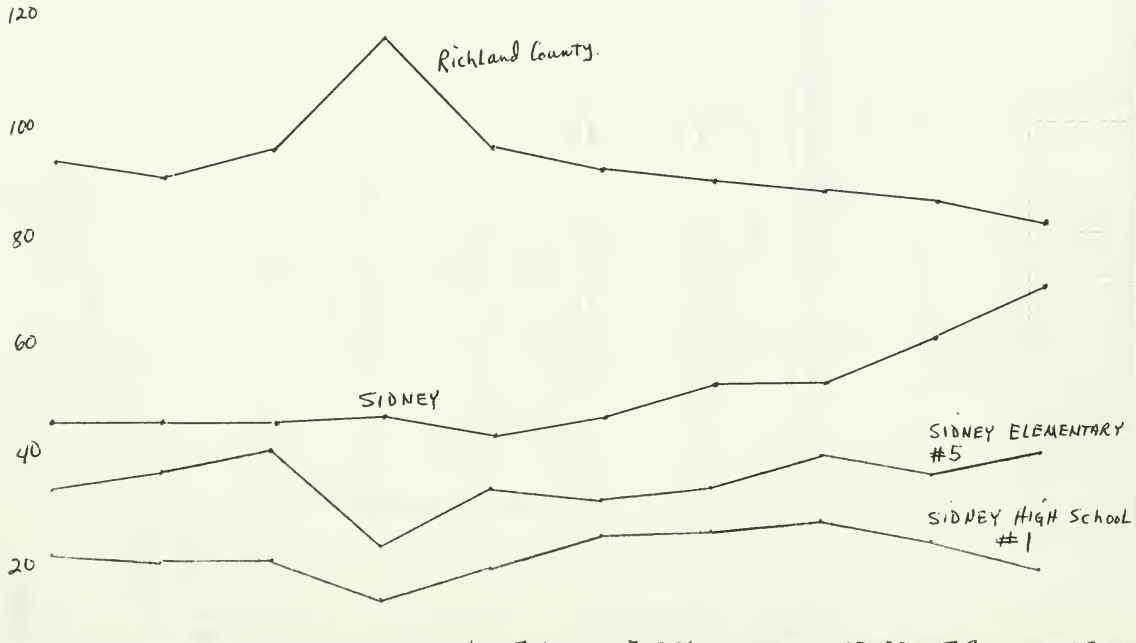
Richland County
SIDNEY High School, DIST #5
SIDNEY ELEMENTARY DIST. #5
city of Sidney

0055

MILL LEVIES

TOTAL Mills



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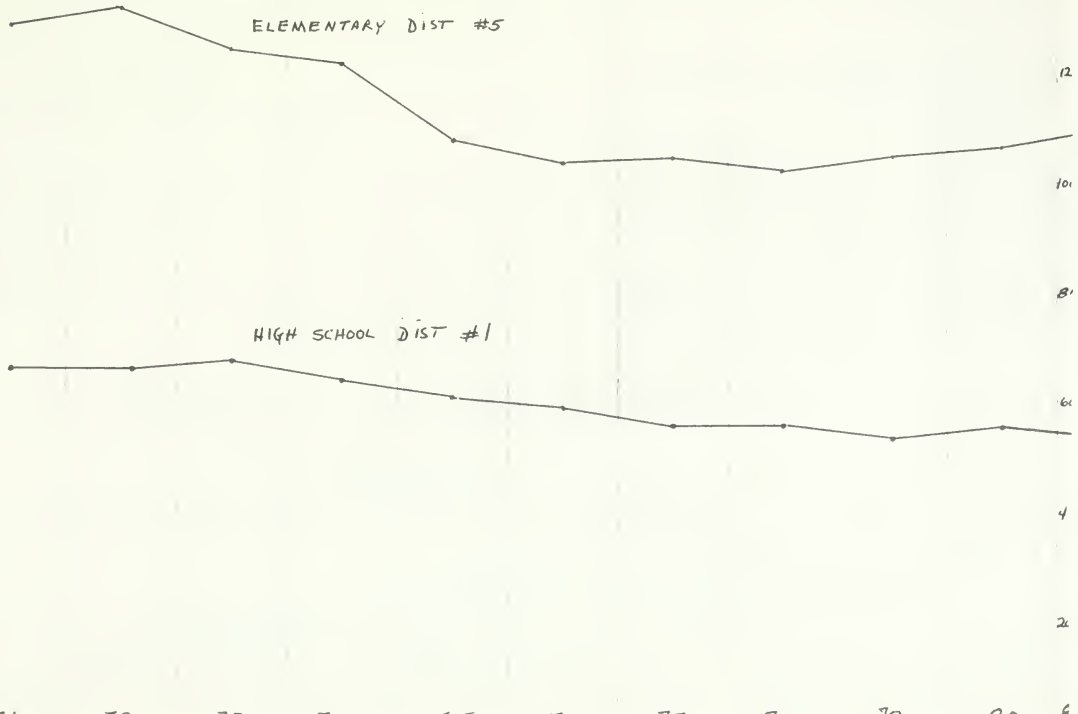
SIDNEY PUBLIC SCHOOLS: ANB



CENSUS INFORMATION

Richland County

Year	Population	Number of Households	Average Number in Households
1950	10,366	N/A	N/A
1960	10,504	N/A	N/A
1970	9,837	3,060	3.2
1980	11,670	4,644	2.5

Sidney

1950	3,987
1960	4,564
1970	4,543
1980	5,600*

*Review figures -- rough preliminary

[Source: Department of Community Affairs,
(1) Montana Population Estimates: 1950-1975
(2) and Montana Population Projections: 1975-2000;
(3) conversations with staff.]

UNEMPLOYMENT RATE

Richland County

Calendar Year	County	State
80	2.5(July)	6.2(July)
79	1.9	5.1
78	2.7	6.0
77	3.6	6.4
76	3.7	6.1
75	3.9	6.4
74	3.6	5.2
73	3.8	4.8
72	3.8	4.8
71	4.3	4.8
70	3.6	4.3

[Source: Research and Analysis, Employment Security Division, Department of Labor and Industry, Montana Employment and Labor Force, February 1980 and August 1980]

COAL BOARD GRANTS

Colstrip -- High School and Elementary District #19

TAXATION INFORMATION:

Elementary District	1979-80	1978-79	1977-78	1976-77
Taxable Valuation	48,693,835	54,953,030	56,621,325	42,747,194
1 Mill	48,693	54,953	56,621	42,747
Mill Levy	10.33	6.89	7.56	11.56
High School District				
Taxable Valuation	50,140,117	56,196,900	57,123,665	44,387,328
1 Mill	50,140	56,196	57,123	44,387
Mill Levy	9.42	6.93	6.32	10.29
TOTAL DISTRICT MILL LEVY	19.75	13.82	13.88	21.85

ENROLLMENT:

	1979-80	1978-79	1977-78	1976-77
Grades K-8	498	426	416	383
Grades 9-12	301	245	217	198

BONDED INDEBTEDNESS:

Elementary - $1,640,000 - Limit - $14,121,212
High School $ 946,000 - Limit - $14,540,663

COAL BOARD GRANTS:

Colstrip Elementary School - $100,000.00 - 7/77 - School Equipment
Colstrip Elementary School - 763,659.08 - 3/77 - Bond Payments
Colstrip High School - 482,330.00 - 3/77 - Bond Payments
Colstrip Public Schools - 34,500.00 - 12/79 - Education Facilities Plan

COAL BOARD GRANTS

Forsyth -- High School and Elementary Districts #4

TAXATION INFORMATION:

	1979-80	1978-79	1977-78	1976-77
Elementary District Tax Valuation	5,682,123	5,772,064	6,699,308	5,280,523
High School District Tax Valuation	11,907,017	11,888,200	15,514,185	15,684,057
High School Mill Levy	29.96	25.02	14.63	13.78
Elementary School Levy	61.52	48.32	37.98	25.55
Total District Levy	91.48	73.34	52.61	39.33

ENROLLMENT:

	K-8	High School	Total
1979-80	409	209	618
1978-79	438	202	640
1977-78	439	219	658
1976-77	471	235	706

BONDED INDEBTEDNESS

Elementary - $350,000 - Limit - N/A
High School - $376,000 - Limit - $3,453,034

COAL BOARD GRANTS:

Forsyth Elementary School	$2,500,000 - December, 1976 - Construction
Forsyth High School	27,000 - July, 1976 - Remodeling
Forsyth Elementary School	193,230 - May, 1978 - Equipment - Construction
Forsyth High School	291,590 - October, 1978 - Equipment - Construction
Forsyth Elementary School	35,00 - April 1979 - School Bus

REVENUE OVERSIGHT COMMITTEE

MONTANA STATE LEGISLATURE

SENATOR JEAN TURNAGE, Chairman
REP. HERB HUENNEKENS, Vice Chairman

November 15, 1980

State Capitol, Room 138
Helena, Montana 59601
Phone 449-3064

TO: Members, Revenue Oversight Committee
FROM: Jim Oppedahl, Staff Researcher
RE: Oil Production information -- Powder River County

Members of the Committee asked for additional information regarding oil production, price, and taxable value for Powder River County. This relates to the previous information provided concerning Richland County and the City of Sidney.

I

The most recent annual review by the Board of Oil and Gas Conservation notes that:

Total [Montana] oil production for 1979 was down by approximately 510,000 barrels at 30 million barrels as compared to 30.5 million barrels for 1978. The oil production from the Williston Basin of eastern Montana, however, has been steadily increasing since 1975. The success and increase of exploratory and development drilling for oil from pay zones in the deeper Paleozoic reservoirs of the Williston Basin continues and 1979's oil production from this area is up by 1.4 million barrels over last year.

.... Montana's future as a major oil and gas producting state is very good. The potential of major oil and gas reserves along the Overthrust Belt of western Montana continues to attract leasing, expanding exploration and some drilling activity.

II

The question of tax revenue available to counties, cities, and the state of Montana from oil production and development is closely tied to the price of oil. According to Don Allen of the Montana Petroleum Association, oil prices in the United States will be completely decontrolled by October 31, 1981.

The average U.S. price of oil in May 1980 was $21.00 a barrel. Foreign crude's F.O.B. average price in the U.S. was $33.44 in August; the average OPEC price for crude oil at the same time was $32.09.

Mr. Allen estimates that decontrol of oil prices will mean an average U.S. crude oil price after October 31, 1981 of $35 to $38.

III

The chart on the following page shows the taxable value of Powder River County and the total taxable value of oil produced in that county. Both values have dropped substantially in the last two years.

According to officials in the Research Division of the Department of Revenue, the reason for the drop in taxable value for oil is due to a shift in the production methods for the Belt Creek oil fields. Gary Energy Corporation of Colorado has moved from primary and secondary recovery processes to an enhanced oil recovery process. The latter process is very expensive.

The Powder River County oil experience differs substantially from the present situation in Richland County.

The charts that follow present an outline of crude oil prices, production, and oil and gas revenues for 1980 provided by the Montana Petroleum Association.

TAXABLE VALUATIONS: COUNTY/CITY

FY	Powder River County	County Mills	Broadus	City Mills
80-81	$50,773,128*	30.77	$693,945	82.20
79-80	63,564,547	33.21	630,660	98.60
78-79	76,802,965	22.35	674,966	87.50
77-78	76,083,551	34.25	701,614	67.00
76-77	76,651,752	26.40	751,336	64.00
75-76	74,141,723	32.35	726,716	63.00
74-75	35,123,433	28.75	676,633	65.00
73-74	18,044,614	38.75	634,901	75.50
72-73	16,710,360	35.35	646,054	75.50
71-72	20,759,363	25.35	649,669	66.00

*Preliminary

POWDER RIVER COUNTY: OIL VALUATION/Production

	Taxable Value	Production - Barrels
80	$13,904,586	Not Available
79	31,356,787	5,646,614
78	68,626,023	7,168,971
77	67,180,091	7,015,217
76	66,750,876	8,739,279
75	66,213,988	8,648,049
74	26,536,081	9,211,263
73	10,591,757	8,134,985
72	9,612,707	6,217,238
71	13,881,649	5,860,476

American Petroleum Institute
2101 L Street, Northwest
Washington, D.C. 20037
202-457-7028

0064

energy backgrounder

October, 1980

PETROLEUM FACTS AT A GLANCE

1. U.S. petroleum imports (crude & products) in September 6,311,000 barrels per day (b/d); imports same month last year 8,006,000 b/d.

2. Imports in September as percentage of total U.S. petroleum supply (which includes natural gas liquids) 37%; imports as percentage same month last year 42.8%.

3. Arab crude oil represented 50.9% of total U.S. crude imports (July); 46.7% same month last year.

4. Average OPEC price for crude oil $32.09 (August 1).

5. Average F.O.B. price in U.S. of foreign crude $33.44 (August 1).

6. Average price for U.S. crude oil $21.00 (May).

7. U.S. crude oil production in September 8,596,000 b/d; production same month last year 8,466,000 b/d. U.S. natural gas liquids production in September 1,594,000 b/d. Same month last year 1,565,000 b/d.

8. U.S. natural gas marketed production 54.5 billion cubic feet daily (cf/d) (July); marketed gas production same month last year 53.4 billion cf/d.

9. U.S. deliveries from primary storage of motor gasoline in September 6,742,000 b/d; deliveries of motor gasoline same month last year 6,878,000 b/d.

10. U.S. deliveries from primary storage of distillate fuel oil (home heating & diesel) in September 2,493,000 b/d; deliveries of distillate same month last year 2,659,000 b/d.

11. Oil, gas and dry wells drilled in U.S. in August 5,147; total for same month last year 4,140.

12. Percentage U.S. crude oil from offshore wells 12.5% (1979); percentage natural gas from offshore wells 25.6% (1978).

13. U.S. proved reserves of crude oil 27.1 billion barrels; U.S. proved reserves of natural gas 194.9 trillion cubic feet; natural gas liquids reserves 5.7 billion barrels (December 31, 1979, API & AGA).

more

FIVE YEAR SUMMARY

	1975	1976	1977	1978	1979
Production, Northern Montana — Bbls.	4,551,324	4,200,539	4,060,957	3,671,322	3,536,296
South Central — Bbls.	1,318,779	1,246,005	1,210,064	1,095,737	1,131,798
Central — Bbls.	3,954,024	4,063,897	3,677,361	3,343,556	3,029,397
Williston Basin — Bbls.	14,312,685	14,496,380	14,621,635	15,103,853	16,546,576
Powder River Basin — Bbls.	8,706,862	8,807,439	9,110,037	7,252,869	5,713,032
TOTAL	32,843,674	32,814,260	32,680,054	30,467,337	29,957,099
No. of Producing Wells, Northern Montana	2,067	1,978	1,999	2,052	2,089
South Central	100	97	109	115	112
Central	303	316	343	347	340
Williston Basin	734	737	789	863	886
Powder River Basin	231	181	178	169	165
TOTAL	3,435	3,309	3,418	3,546	3,592
Average Daily Production/Well — BOPD,					
Northern Montana	6.0	5.8	5.6	4.9	4.6
South Central	36.1	35.1	30.4	26.1	27.7
Central	35.8	35.2	29.4	26.4	24.4
Williston Basin	53.4	53.8	50.8	48.9	51.2
Powder River Basin	103.2	133.3	140.2	117.6	94.9
STATE AVG.	26.2	27.1	26.2	23.5	22.9
Development Wells Drilled, Oil Wells	105	106	98	123	120
Gas Wells	261	264	220	223	235
Dry Holes	222	169	188	232	182
TOTAL	588	539	506	578	537
Exploratory Wells Drilled, Oil Wells	6	17	24	21	35
Gas Wells	15	8	19	15	20
Dry Holes	236	223	129	179	211
TOTAL	257	248	172	215	266
TOTAL WELLS DRILLED	845	787	678	793	803
TOTAL FOOTAGE DRILLED	2,467,838	2,826,301	2,482,379	2,968,842	3,147,341
AVERAGE DEPTH OF ALL WELLS	2,921	3,591	3,661	3,744	3,919

STATE OF MONTANA
ESTIMATED SEVERANCE TAX (O & G) REVENUES
GENERAL FUND ONLY

	Oil	Gas	Total
FY 1980 (7/79-6/80)	$ 10,542,125	$ 1,261,517	$ 11,803,642
FY 1981 (Estimated)	10,537,379	2,182,678	12,720,057
FY 1982 " "	12,137,910	2,730,360	14,868,270
FY 1983 " "	13,871,320	3,203,893	17,075,213

ESTIMATED RESOURCE INDEMNITY
TRUST TAX REVENUES

	Oil	Gas	Total
FY 1980 (7/79-6/80)	1,893,723	300,181	2,193,904
FY 1981 (Estimated)	2,104,900	336,923	2,441,823
FY 1982 " "	2,321,659	373,055	2,694,714
FY 1983 " "	2,526,284	398,867	2,925,151

ESTIMATED REVENUES FROM
ROYALTIES, RENTALS (INCLUDING
BONUSES) FROM STATE LANDS

	Royalties	Rentals	Total
FY 1980 (7/79-6/80)	4,200,000	14,000,000	18,200,000
FY 1981 (Estimated)	4,200,000	26,000,000	30,200,000

CONSERVATION TAX

	Oil	Gas	Total
FY 1980	585,642	107,289	692,931

(Note: The 81 and 82 projections are based on the tax being dropped from 1/10 of 1% to 1/20 of 1%, effective October 1, 1980.)

FY 1981	472,500	75,625	548,125
FY 1982	Total for Oil and Gas		465,000

NET PROCEEDS

FY 1980 Estimated Total $35,425,000

OIL FIELD EQUIPMENT

FY 1980 Estimate 930,000

****

Total Oil and Gas Revenues for Fiscal Year 1980 69,245,477

STATE
OF
MONTANA

ATTORNEY GENERAL
MIKE GREELY

STATE CAPITOL, HELENA, MONTANA 59601 TELEPHONE (406) 449-2026

14 November 1980

Mary L. Craig, Director
Department of Revenue
Mitchell Building
Helena, Montana 59601

Dear Ms. Craig:

You have requested my opinion on the following question:

> Whether the Department of Revenue should use the average price of oil and gas during fiscal year 1979 in determining the amount of the increase in oil and gas severance tax revenues to be allocated to local governments pursuant to section 15-36-112, MCA.

The Department of Revenue collects severance taxes imposed on oil and gas extracted in Montana, pursuant to Title 15, chapter 36, MCA. The amount of the tax is a percentage of the gross value of the oil and gas produced. "Gross value" is determined by taking the number of marketable barrels of oil or cubic feet of gas produced each month at the average value at the wellhead during the month of production. Section 15-36-103, MCA. The severance tax is allocated according to a formula set out in section 15-36-112, MCA, enacted in 1979 (Laws of Montana (1979), ch. 700, sec. 3). In relevant part, section 15-36-112 provides:

> (1) Each year the department of revenue shall determine the amount of tax collected under this chapter from within each county.
> (2) The severance taxes collected under this chapter are allocated as follows:
> (a) The amount, if any, by which the tax collected from within a county for any fiscal year exceeds the total amount collected from within that county for the previous fiscal year, by reason of increased production and not because of increase in or elimination of federal price ceilings on oil and gas, is allocated to the general fund of the county for distribution as provided in subsection (3);

(b) any amount not allocated in the county under subsection (2)(a) is allocated to the state general fund.

Your question concerns subdivision (2)(a), which states that counties are to be allocated the amount by which severance tax revenues increased from the previous year "by reason of increased production and not because of increase in or elimination of federal price ceilings on oil and gas." The department proposes to compute this amount by taking the amount of any increase in production in a given county in fiscal year 1980 at the average price during fiscal year 1979 to determine the portion of the severance tax revenue increase which is attributable solely to increased production. The department would allocate only that portion to the county. The remaining portion of the severance tax revenue increase, which is attributable to price increases during fiscal year 1980, would be entirely disregarded for purposes of this allocation.

In determining whether the department's proposal is appropriate, legislative intent is controlling and that intent must, if possible, be determined from the plain meaning of the words used. Haker v. Southwestern Ry. Co., ___ Mont. ___, 578 P.2d 724, 727 (1978). On its face section 15-36-112(2)(a), MCA, calls for an allocation to a county of the portion of the increase in tax revenue which is due to increased production within the county, but not the portion which is due to changes in federal price ceilings. This is the "plain meaning" of the statute and it would not be ambiguous if production and federal price ceiling levels were the only factors which could have caused increased tax revenues in fiscal year 1980.

The severance tax is not a function of production and federal price ceiling levels, however, but of production, contract price, and the tax rate. Of these, the statute specifically mentions only production. The contract price of oil and gas is affected by federal price ceilings, but is not determined by them. According to information you have supplied, it is practically impossible to measure the effect of federal decontrol, standing alone, on the average price of oil and gas produced in fiscal year 1980. It is known that higher contract prices in fiscal year 1980 were caused by, among other things, the vagaries of global supply and demand, and inflationary pressures in general. In short, federal decontrol did contribute to higher prices during the period, which translated into increased severance tax revenues, but those higher prices were not caused by decontrol alone.

A fundamental goal of statutory construction is to give effect to the evident object or purpose of the statute. Burritt v. City of Butte, 161 Mont. 530, 508 P.2d 563 (1973). The Legislature expressly declared that the purpose of section 15-36-112, MCA, is to "alleviate the impact of [oil and gas] development by distributing a portion of [severance tax] revenue directly to the counties, cities, and towns affected by the development." While the legislative history of the provision in question is inconclusive, it appears that provision was added to eliminate the possibility that counties which are not affected by increased development would receive a windfall in the event of price increases which would lead to increased tax revenues even if production, and development, declined in the county. Read in its entirety, section 15-36-112, MCA, reflects twin purposes; viz, to provide a means to alleviate oil and gas development impacts in counties where such impacts are most acute, and to avoid giving windfalls to counties where development does not represent a growing problem. To this end, in my opinion, the Legislature attempted to draw a line between counties in which production increased and counties in which production did not increase, with the positive emphasis on addressing impacts occurring in the current year of production.

Against this background, the most reasonable interpretation of the provision in question is one which results in a full allocation of the portion of the tax revenue increase that is traceable to increased development in a given county. In my opinion, the department's proposal does not have this effect. This can be illustrated by way of example.

If a county produced 100 barrels of oil in fiscal year 1979 at an average price of ten dollars per barrel, the gross value of the oil would have been $1000. At a two percent tax rate the severance tax collected would have been twenty dollars. If production increased in fiscal year 1980 to 200 barrels and the average price increased to fifteen dollars, the gross value of the oil would be $3000 and the severance tax $60. In absolute terms, severance taxes would have increased by $40. Under the department's proposal, using the average price during fiscal year 1979, the county's share of the increased taxes would amount to $20.

If the average price during fiscal year 1980 is used, the 100 barrel production increase has a gross value of $1500 and the amount to be allocated to the county is $30. The ten dollar difference between this allocation and the $40 total increase in severance tax revenues exists because price increases on the first 100 barrels produced in fiscal year 1980 are not allocated. In other words, the county

would receive the benefit of price increases on the amount by which production increased during the period, but not on the entire year's production.

This computation method has the advantage of returning to an affected county all of the tax increases which relate to increased development, including that portion which is traceable to higher prices on the amount of the increase. At the same time, there is no windfall because a county must show an increase in production to be entitled to any allocation, and does not receive any benefit from higher prices on the previous year's level of production. In my opinion, this is what the Legislature intended to accomplish by enacting section 15-36-112, MCA.

THEREFORE, IT IS MY OPINION:

> The Department of Revenue should use the average price of oil and gas during fiscal year 1980 in determining the amount of the increase in oil and gas severance tax revenues to be allocated to local governments pursuant to section 15-36-112, MCA.

Very truly yours,

MIKE GREELY
Attorney General

SEVERANCE TAX REFUNDS TO COUNTIES
December 1980

COUNTY	CRUDE OIL	NATURAL GAS
Big Horn	$ -0-	$ 165.54
Blaine	723.60	-0-
Carbon	15,144.94	14,780.26
Custer	-0-	1,323.15
Daniels	464.78	-0-
Fallon	54,214.46	14,962.49
Glacier	-0-	1,554.11
Hill	1,230.59	22,548.66
Liberty	2,513.22	22,424.08
Musselshell	56,030.66	-0-
Pondera	1,828.16	59,730.13
Powder River	-0-	3,718.31
Richland	331,344.81	21,009.87
Roosevelt	32,346.72	-0-
Sheridan	490,932.20	9,802.16
Stillwater	-0-	14,692.93
Teton	5,713.66	-0-
Toole	-0-	46,542.39
Valley	-0-	853.54
TOTAL	$992,487.80	$234,107.62

Legislative Authority: 15-36-112, MCA.

Source: Department of Revenue, Miscellaneous Tax Division.

REVENUE OVERSIGHT COMMITTEE

MONTANA STATE LEGISLATURE

SENATOR JEAN TURNAGE, Chairman
REP. HERB HUENNEKENS, Vice Chairman

State Capitol, Room 138
Helena, Montana 59601
Phone 449-3064

September 5, 1980

TO: Members, Revenue Oversight Committee

FROM: Jim Oppedahl, Staff Researcher

RE: Bill Draft - Deficiency levy

Enclosed for your information and review is a copy of the bill draft requested at the last meeting regarding the transfer of responsibilities for calculating statewide school deficency levies.

Please note that the bill transfers the calculation responsibility for both the 'additional state levy for state deficiency' and the 'permissive deficiency levy'. I have enclosed a chart that outlines the foundation program for your reference.

Please contact me at 449-3064 if you have any questions or comments.

cc: Office of Public Instruction
Legislative Fiscal Analyst
Office of Budget and Program Planning
Montana Taxpayers Association
Dennis Lopach

REVENUE OVERSIGHT COMMITTEE

MONTANA STATE LEGISLATURE

SENATOR JEAN TURNAGE, Chairman
REP. HERB HUENNEKENS, Vice Chairman

State Capitol, Room 138
Helena, Montana 59601
Phone 449-3064

November 6, 1980

TO: Members, Revenue Oversight Committee
FROM: Jim Oppedahl, Staff Researcher
RE: School Deficiency Draft Bill -- Draft Amendment

At the last committee meeting members asked that language be drafted to mandate an automatic supplemental to cover shortfalls in the foundation program due to inaccurate revenue estimates by the Governor's Budget Office.

The following language could provide such an amendment to the draft bill that the Committee has under discussion:

LC 0102/01

1. Page 3.
Following: line 23
Insert: "(6) Prior to May 30 each year, the budget director shall review the calculation made in accordance with subsection (1) above. If, after review, the original calculation is determined not to have provided the amount needed to fill the total state requirements for the elementary and high school district foundation programs, the deficiency is an automatic supplemental appropriation from the general fund payable in the fiscal year in which the deficiency occurred."

The same amendment would also be added on page 6, following line 10. Additionally, technical amendments would also need to be drafted to strike language in the education finance laws that pro-rate revenue shortfalls to districts.

Please review the above language to verify that it incorporates the concepts that members intended.

If you have any questions, please contact me at 449-3064.

cc: Bob Stockton, OPI
John La Faver, LFA
George Bousliman, OBPP
Dennis Lopach, MonTax

OFFICE OF PUBLIC INSTRUCTION
STATE CAPITOL
HELENA, MONTANA 59601
(406) 449-3095

Georgia Rice
Superintendent

July 11, 1980

TO: Members, Revenue Oversight Committee

FROM: Georgia Rice, Superintendent of Public Instruction

RE: Montax Petition to the Office of Public Instruction for the Adoption of a Rule Prescribing a Format for the Calculation of any Deficiencies in State Equilization Aid to the Foundation Program.

The Montana Taxpayers Association (MTA) has petitioned my office to promulgate a rule relating to the method by which we calculate revenues available to fund state equalization aid to Montana's schools and determine any resulting state deficiency.

In paragraph 2 of its petition MTA notes that it has initiated an action against my office and the Department of Revenue contending that there is no need for a statewide deficiency levy to fully fund state equalization aid to Montana's schools during the 1979-80 school year. MTA points out in paragraph 3 of the petition that it has amended its complaint

> . . . several times to bring before the District Court additional errors that petitioner believes OPI committed in making its calculation for the 1979-80 school year.

In paragraph 5 of the petition MTA describes in considerable detail how the "state's share" of the foundation program is calculated even though in paragraph 8 MTA suggests that it has initiated this litigation ". . . to determine the process OPI has followed in determining educational funding requirements." A review of the several complaints MTA has filed in this action will, I believe, convince anyone that its attorneys have an excellent grasp on both the statutes involved in calculating state equalization aid and the process by which my office calculates the need, if any, for a state deficiency levy.

In paragraph 12 MTA states that it has a right to know about and participate in the operation of agencies of state government. I fully agree. I have always recognized the public's right to know about the operation and activities of my office. In the MTA action, for example, I made my chief financial officer freely available to MTA's attorneys who questioned him extensively. He not only fully answered their inquiries but, in addition, provided them with additional

documents. I would have provided MTA with this same information without the need for any litigation at all. All MTA had to do was ask. For whatever reason MTA deposed my chief financial officer it was certainly not because its attorneys were otherwise unable to obtain the information they sought since they had interviewed him extensively prior to the time they took his deposition.

Any individual or organization is more than welcome to any information my office can provide with respect to our operations and activities. This is certainly so with respect to MTA. As I previously stated had MTA merely wanted information it would have been available for the asking without the need for bringing any kind of legal proceedings. Certainly MTA has a right to test in court the need for a state deficiency levy and I believe that is the reason it brought the action rather than to merely obtain information as to how we arrived at that determination.

I am aware of the view held by many that state agencies adopt more rules and regulations than are necessary to the effective functioning of government. If, however, the members of this committee feel it is advisable for our office to promulgate rules on this subject I would be pleased to be so advised.

STATE OF MONTANA
Office of the Legislative Fiscal Analyst
STATE CAPITOL
HELENA, MONTANA 59601
406/449-2986

JOHN D. LaFAVER
LEGISLATIVE FISCAL ANALYST

0076

July 10, 1980

Honorable Jean Turnage, Chairman
Revenue Oversight Committee
State Capitol
Helena, Montana 59601

Dear Chairman Turnage:

I have been asked by Dennis Lopach, attorney for the Montana taxpayer's association to relate to you our staff's experience with the present method of calculating deficiency tax levies for public schools.

The legislative finance committee almost annually has expressed its frustration with the present process. The estimates of the office of public instruction, during the past several years, have resulted in significant unnecessary property tax levies. During the fiscal year just past, a one mill levy was imposed. Our staff pointed out last fall that no levy was necessary. In actuality, a surplus of about $11 million will eventuate.

The legislature may wish to consider amending the present procedure to correct some obvious weaknesses. Some suggestions that you may wish to consider include:

1. statutorily detail the procedures to be used in determining projected equalization and permissive deficiencies;

2. assign the calculation of these amounts to a "disinterested" agency such as the executive budget office;

3. legislatively appropriate the deficiency amount (as is done with the university six-mill levy) and have the department of revenue set a levy to meet the appropriated amount;

4. consolidate funds for support of public schools to avoid levies when balances are available.

I would be happy to discuss these items further at your convenience.

Sincerely,

John D. LaFaver
Legislative Analyst

JDL/jn

REVENUE OVERSIGHT COMMITTEE

MONTANA STATE LEGISLATURE

SENATOR JEAN TURNAGE, Chairman
REP. HERB HUENNEKENS, Vice Chairman

State Capitol, Room 138
Helena, Montana 59601
Phone 449-3064

September 16, 1980

TO: Members, Revenue Oversight Committee

FROM: Jim Oppedahl, Staff Researcher

RE: Vehicle Registration Information

I

The Committee requested information regarding the Washington State Motor Vehicle Registration system. Senator Thomas explained that the process in Montana can very often take a citizen an hour and a half to two hours. He expressed a desire to see how registration operated in Washington State.

Washington State has a staggered licensing system based on a fee system. The State converted to a staggered licensing system in 1977. License plates are validated with stickers showing the month and year of expiration. The state has a registration fee of $13.50, a renewal fee of $9.50, $1.00 filing fee, plus a 2.2% annual excise tax.

The administrator of the Title and Registration Control Division of the Washington State Department of Licensing, Ed Clancy, explained that the Washington Motor Vehicle Registration System is built on two primary levels -- state and county. The Department of Licensing has a computerized pre-billing method of notifying vehicle owners 45 days prior to the renewal of an impending expiration date on their vehicle license. The computerized letter is sent out to all vehicle owners of record. The vehicle owner has an option of mailing the vehicle fees back to his local county auditor, taking the pre-bill form into an authorized sub-agent, or mailing the forms and payment back to Olympia.

Mr. Clancy explained that the sub-agents of the county auditor are private business individuals who have made an application to the county auditor to become a motor vehicle registration agent. The applications are granted on the basis of community need for

additional facilities and the character of the applicant. Typical sub-agents range from real estate brokers to grocery store operators.

The sub-agents collect $1.50 per application as a processing fee. This fee is separate from any fee indicated on the advanced billing sent by the department in Olympia. The sub-agent is directly responsible to the county auditor in each county. The county auditor collects $1.00 for processing applications -- either directly from individuals coming into his office, or for checking applications processed by sub-agents.

The Washington State computerized pre-billing renewal notice system was started in 1975. Mr. Clancy indicated that sixty-five to seventy percent of the pre-billing renewal notices sent to vehicle owners of record are actually returned to county auditors, sub-agents, or Olympia.

Mr. Clancy said that while the department would like to have a 100% return rate, they are satisfied with the current rate. The Department recognizes that society is highly mobile, that a number of renewal notices will go to non-current addresses, and to people who no longer have the vehicle.

II.

During the 1979 Session, the Legislature appropriated money to the Department of Justice to resurrect the vehicle registration renewal notices program. The program had been halted in 1978 after the Registrar's Bureau in Deer Lodge found that only thirty-eight to thirty-nine percent of renewal notices were being used. During the same period, the Registrar's Bureau apparently experienced a number of problems with the automation of the renewal registration notice system.

The present system, mandated by the 1979 Legislature, mails a vehicle registration renewal notice post card to vehicle owners. If the post card pre-assesses the vehicle, a taxpayer does not need to go to the assessor's office. The post card system also is meant to cut mailing expenses and to eliminate the possibility of the renewal notice being confused as a legtimate registration. Under the current system, a renewal notice goes to every owner of a staggered vehicle of record who renewed the registration in the previous year. The present program began in February of 1980 and is sending out 42,000 to 45,000 renewal notices a month.

The renewal notice and pre-assessment system needs several pieces of data in order to work: a four-digit vehicle code, the make, vehicle type, vehicle year, market value, the tax code, and the mill levy information for each county.

From January through April of 1980, the Registrar's Bureau has found that 54% of vehicles being registered have the vehicle code number on file. In other words, the treasurers of the counties are cooperating in the process of placing the correct vehicle code on the registration forms.

According to officials at the Registrar's Bureau, they are receiving very few complaints about the current system. The problems that they encounter in the system are that people send checks back to Deer Lodge, about eight percent of the post cards are undeliverable and that vehicles more than six or seven years old have no code that can be assigned. The officials at the Registrar's Bureau feel that it will take a few years to complete the vehicle coding and to erase from the system vehicles that are so old that a code cannot be assigned.

Page 4 of the report presents a sample post card sent to an individual in Lewis and Clark County. It shows both the front and back of the post card. Tax information and the total bill owed by the taxpayer is on the front. Vehicle registration renewal instructions are on the back of the card.

JO:eg

44

FRONT

1 REGISTRAR'S BUREAU
Deer Lodge, Montana 59722

First Class Mail
U.S. POSTAGE
PAID ONE OUNCE
PERMIT NO. 923
DEER LODGE MT

PRESORTED
FIRST CLASS MAIL

PARKS DANIEL B
4 S PARK AVE
HELENA 59601

MOVED, LEFT NO ADDR

RETURN TO SENDER

TAX CODE	VEH CODE
4101	170150

CURRENT PLATE	TYPE	VEH YR	MAKE	MODEL	STYLE	COLOR	WEIGHT
05-45049	PC	77	CHEV	NOV		BRN	OVER

EXPIRATION DATE	VEHICLE IDENT. MOTOR NO.	TITLE NO.
800731	1Y27U7W169302	M99791

MARKET VALUE	TAXABLE VALUE	SCHOOL DIST #	MILL LEVY	CO	TON
3,600	468	1	308.25	05	

CO TAX	144.26
REG FEE	10.00/2.00
GVW TAX	
JUNK VEH.	.50
PERS PLATE	
TOTAL	156.76

BACK

VEHICLE REGISTRATION RENEWAL NOTICE

(If your vehicle has been pre-assessed you will not have to go to the Assessor's office)

1 If you no longer own this vehicle, please destroy this card. Do not return to the Registrar of Motor Vehicles.

2 Please verify that the vehicle information is correct. If not, advise your County Treasurer of any errors.

3 On or before the 25th of your anniversary month, mail * or take your old registration receipt, your pre-assessed card, your check, and proof of insurance to the County Treasurer's office. (If not pre-assessed go to Assessor first).
Your anniversary month is the month following the expiration date as shown on the front of this card.

4 The law requires that you show proof of liability insurance in an amount not less than $25,000, $50,000, $5,000

* If applying by mail include items described in (3) above and sign the certification form below. Check with your County Treasurer for mailing instructions.

I certify under penalty of law that this vehicle is insured as prescribed by Montana Statute 61 6 302, MCA.

Sign _____

---------- BILL NO. ------

INTRODUCED BY ----------

BY REQUEST OF THE REVENUE OVERSIGHT COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW THE DEPARTMENT OF REVENUE TO WAIVE INTEREST UPON DELINQUENT TAXES AND PENALTIES IN CERTAIN CASES; AMENDING SECTION 15-1-206, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-1-206, MCA, is amended to read:

"15-1-206. Waiver and abatement of penalties -- interest. (1) The department may, in its discretion, waive the assessment of penalty for the late filing of any tax statement or return required to be filed with the department when the filing is done within 5 days of the date specified for filing the return or statement and for the late payment of any tax collected by the department when the payment is made within 5 days of the date specified for payment of the tax.

(2) Whenever the department waives or abates a penalty provided for in this title, it also may, in its discretion, waive or abate interest not to exceed $100 due upon the penalty or tax."

-End-

_____ BILL NO. _____

INTRODUCED BY _____

BY REQUEST OF THE REVENUE OVERSIGHT COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT THE SAME INTEREST RATE APPLY TO OVERPAYMENT REFUNDS AS TO DELINQUENT TAX DUE FOR THE INCOME AND CORPORATION TAX; AMENDING SECTIONS 15-30-149 AND 15-31-531, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-30-149, MCA, is amended to read:

"15-30-149. Credits and refunds -- period of limitations. (1) If the department discovers from the examination of a return or upon claim duly filed by a taxpayer or upon final judgment of a court that the amount of income tax collected is in excess of the amount due or that any penalty or interest was erroneously or illegally collected, the amount of the overpayment shall be credited against any income tax, penalty, or interest then due from the taxpayer and the balance of such excess shall be refunded to the taxpayer.

(2) Effective with taxable years ending on or after December 31, 1959, no such credit or refund shall be allowed or made after 5 years from the date prescribed by statute for filing the return or after 1 year from the date the

overpayment occurred, whichever period expires later, unless before the expiration of such period a claim therefor is filed by the taxpayer or the department has determined the existence of the overpayment and has approved the refund or credit thereof. However, if an overpayment of tax results from a net operating loss carryback, the overpayment may be refunded or credited within the period that expires on the 15th day of the 40th month following the close of the taxable year of the net operating loss if that period expires later than 5 years from the due date of the return for the year to which the net operating loss is carried back.

(3) Within 6 months after a claim for refund is filed, the department shall examine said claim and either approve or disapprove it. If said claim is approved, the credit or refund shall be made to the taxpayer within 60 days after the claim is approved; if the claim is disallowed, the department shall so notify the taxpayer and shall grant a hearing thereon upon proper application by the taxpayer. If the department disapproves a claim for refund, review of the determination of the department may be had as otherwise provided in this chapter.

(4) Except as hereinafter provided for, effective with taxable years ending on or after December 31, 1962, interest shall be allowed on overpayments at the rate of 6 9% per

annum from the due date of the return or from the date of the overpayment (whichever date is later) to the date the department approves refunding or crediting of the overpayment. With respect to tax paid by withholding or by estimate, the date of overpayment shall be deemed to be the date on which the return for the taxable year was due. No interest shall accrue on an overpayment if the taxpayer elects to have it applied to his estimated tax for the succeeding taxable year, nor shall interest accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment. No interest shall be allowed if:

(a) the overpayment is refunded within 6 months from the date the return is due or the date the return is filed, whichever date is later;

(b) the overpayment results from the carryback of a net operating loss; or

(c) the amount of interest is less than $1.

(5) An overpayment not made incident to a bona fide and orderly discharge of an actual income tax liability or one reasonably assumed to be imposed by this law shall not be considered an overpayment with respect to which interest is allowable."

Section 2. Section 15-31-531, MCA, is amended to read:

"15-31-531. Credit for overpayment -- interest on overpayment. (1) If the department of revenue determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment shall be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as hereinafter provided for, interest shall be allowed on overpayments at the rate of 5 9% per annum from the due date of the return or from the date of overpayment (whichever date is later) to the date the department approves refunding or crediting of the overpayment. Interest shall not accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment. No interest shall be allowed:

(a) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(b) if the amount of interest is less than $1.

(3) A payment not made incident to a bona fide and orderly discharge of an actual corporation license tax liability or one reasonably assumed to be imposed by this law shall not be considered an overpayment with respect to which interest is allowable."

-End-

---------- BILL NO. ------

INTRODUCED BY _____

BY REQUEST OF THE REVENUE OVERSIGHT COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TRANSFERRING RESPONSIBILITY FOR THE CALCULATION OF THE FOUNDATION PROGRAMS'S ADDITIONAL STATE LEVY FOR STATE DEFICIENCY AND STATE PERMISSIVE DEFICIENCY LEVY FROM THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO THE GOVERNOR'S BUDGET DIRECTOR; AMENDING SECTIONS 20-9-351 AND 20-9-352, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 20-9-351, MCA, is amended to read:

"20-9-351. Additional state levy for state deficiency -- calculation. (1) If the estimated state equalization level made under the provisions of 20-9-348 is less than 100% ~~of budgeted requirements, it shall be the duty of~~ the budget director appointed in accordance with 17-7-103 shall calculate the amount required to make up the deficiency and shall notify the director of the department of revenue no later than the second Monday in August of the amount needed to fill the total state requirements for the elementary district foundation programs and the high school district foundation programs.

~~(2)~~ The director of the department of revenue ~~to~~ shall

levy, separately for the elementary districts and the high school districts, additional taxes in such number of mills on the taxable value of all taxable property within the state as ~~shall be~~ is required by subsection (1) of this section to complete the financing of the foundation programs of all elementary districts or all high school districts of the state.

~~(2)~~(3) The state treasurer shall keep a separate accounting of the proceeds realized from these mill levies. The superintendent of public instruction shall apportion the proceeds of the mill levies to the elementary districts of the state or the high school districts of the state, whichever the case may be, on the following basis:

(a) determine the total amount required from this source of revenue by the several elementary or high school districts of the state;

(b) determine the total amount of moneys available for this source of revenue;

(c) calculate the percentage the amount determined in subsection ~~(2)~~(3)(b) is of the amounts determined separately in subsection ~~(2)~~(3)(a) for all elementary or all high school districts;

(d) multiply each elementary district or each high school district requirement for this source of revenue by the percentage calculated in subsection ~~(2)~~(3)(c).

~~(3)~~(5) When the total amount of the proceeds realized from these mill levies is greater than the requirements of all the elementary districts or high school districts of the state, whichever the case may be, the excess amount of moneys shall be retained by the state for reduction of the ensuing year's additional state levy for elementary schools or high schools or, if there is no additional state levy under this section, the excess may be transferred to the state equalization aid account for the reduction of the legislative appropriation.

~~(4)~~(5) The apportionment of state moneys under this section shall be known as the "additional state levy for state deficiency", and it shall be the last source of revenue in calculating the financing of the elementary district foundation program and the high school district foundation program.

~~(5)--the--superintendent--of--public--instruction--shall compute--the--budgeted-requirement-for-this-source-of-revenue for--each--district--and--shall--supply--the---total---state requirements-for-the-elementary-district-foundation-programs and--the--high--school--district--foundation-programs-to-the director-of-the-department-of-revenue-on-the--second--Monday of-August~~

Section 2. Section 20-9-352, MCA, is amended to read:

"20-9-352. Permissive amount and permissive levy --

calculation. (1) Whenever the trustees of any district shall deem it necessary to adopt a general fund budget in excess of the foundation program amount but not in excess of the maximum general fund budget amount for such district as established by the schedules in 20-9-316 through 20-9-321, the trustees shall adopt a resolution stating the reasons and purposes for exceeding the foundation program amount. Such excess above the foundation program amount shall be known as the "permissive amount", and it shall be financed by a levy on the taxable value of all taxable property within the district as prescribed in 20-9-141, supplemented with revenue from a levy on all the taxable property in the state.

(2) The district levies to be set for the purpose of funding the permissive amount are determined as follows:

(a) For each elementary school district, the county commissioners shall annually set a levy not exceeding 9 mills on all the taxable property in the district for the purpose of funding the permissive amount of the district. The permissive levy in mills shall be obtained by multiplying the ratio of the permissive amount to the maximum permissive amount by 9 or by using the number of mills which would fund the permissive amount, whichever is less. If the amount of revenue raised by this levy is not sufficient to fund the permissive amount in full, the amount

of the deficiency shall be paid to the district from the earmarked revenue fund, permissive levy account, according to the provisions of subsections (3)~~,~~ [(4)], and ~~(4)~~ [(5)] of this section.

(b) For each high school district, the county commissioners shall annually set a levy not exceeding 6 mills on all taxable property in the district for the purpose of funding the permissive amount of the district. The permissive levy in mills shall be obtained by multiplying the ratio of the permissive levy to the maximum permissive amount by 6 or by using the number of mills which would fund the permissive amount, whichever is less. If the amount of revenue raised by this levy is not sufficient to fund the permissive amount in full, the amount of the deficiency shall be paid to the district from the earmarked revenue fund, permissive levy account, according to the provisions of subsections (3)~~,~~ [(4)], and ~~(4)~~ [(5)] of this section.

[(3) The budget director appointed in accordance with 17-7-193 shall calculate the amount required to make up the state permissive deficiency levy and shall notify the director of the department of revenue no later than the second Monday in August of the amount needed to fill the total state permissive deficiency levy requirements.]

~~(3)~~[(4)] The director of the department of revenue shall

annually set a levy on all the property of the state which will produce enough revenue to fund the permissive levy deficiency ~~of--the--elementary-and-high-school-districts-of-the-state~~ [established in subsection (3) of this section]. The proceeds of this levy shall be deposited to the earmarked revenue fund, permissive levy account, and shall be distributed to the elementary and high school districts in accordance with their entitlements as determined by the superintendent of public instruction according to the provisions of subsections (1) and (2) of this section.

~~(4)~~[(5)] Such distribution shall be made in two payments. The first payment shall be made at the same time as the first distribution of state equalization aid is made after January 1 of the fiscal year. The second payment shall be made at the same time as the last payment of state equalization aid is made for the fiscal year. If the revenue collected is not sufficient to finance the deficiencies of the districts as determined according to subsection (2), each district will receive the same percentage of its deficiency. Surplus revenue in the permissive levy account shall be used to reduce the state levy required for the next succeeding fiscal year. Interest earned on investment of permissive levy funds shall be deposited to the earmarked revenue fund, permissive levy account, for distribution during the next succeeding fiscal year."

-End-

---------- BILL NO. ------

INTRODUCED BY ----------

BY REQUEST OF THE REVENUE OVERSIGHT COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO REDUCE INDIVIDUAL INCOME TAX ON INTEREST INCOME EARNED BY A TAXPAYER; AMENDING SECTION 15-30-111, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-30-111, MCA, is amended to read:

"15-30-111. Adjusted gross income. (1) Adjusted gross income shall be the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 or as that section may be labeled or amended and in addition shall include the following:

(a) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision thereof;

(b) refunds received of federal income tax, to the extent the deduction of such tax resulted in a reduction of Montana income tax liability.

(2) Adjusted Notwithstanding the provisions of the federal Internal Revenue Code of 1954 as labeled or amended, adjusted gross income does not include the following which are exempt from taxation under this chapter:

(a) all interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision thereof;

(b) interest income earned by a taxpayer in a taxable year up to and including $1,000 for a taxpayer filing a separate return and $2,000 for each joint return.

~~(b)~~(c) all benefits received under the Federal Employees' Retirement Act not in excess of $3,600;

~~(c)~~(d) all benefits paid under the teachers' retirement law which are specified as exempt from taxation by 19-4-706;

~~(d)~~(e) all benefits paid under The Public Employees' Retirement System Act which are specified as exempt from taxation by 19-3-105;

~~(e)~~(f) all benefits paid under the highway patrol retirement law which are specified as exempt from taxation by 19-6-705;

~~(f)~~(g) all Montana income tax refunds or credits thereof;

~~(g)~~(h) all benefits paid under 19-11-602, 19-11-604, and 19-11-605 to retired and disabled firefighters, their surviving spouses and orphans;

~~(h)~~(i) all benefits paid by first- or second-class cities for the policemen's retirement system provided for by Title 19, chapter 9.

(3) In the case of a shareholder of a corporation with respect to which the election provided for under subchapter S. of the Internal Revenue Code of 1954, as amended, is in effect but with respect to which the election provided for under 15-31-202, as amended, is not in effect, adjusted gross income does not include any part of the corporation's undistributed taxable income, net operating loss, capital gains or other gains, profits, or losses required to be included in the shareholder's federal income tax adjusted gross income by reason of the said election under subchapter S. However, the shareholder's adjusted gross income shall include actual distributions from the corporation to the extent they would be treated as taxable dividends if the subchapter S. election were not in effect."

-End-

---------- BILL NO. ------

INTRODUCED BY ----------

BY REQUEST OF THE REVENUE OVERSIGHT COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO ELIMINATE CERTAIN TAXES FOR LINEAL DESCENDANTS; AMENDING SECTIONS 72-16-313 AND 72-16-321, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 72-16-313, MCA, is amended to read:

"72-16-313. Exemptions of spouse and other relatives. (1) The clear value of all property distributed or passing to decedent's surviving spouse is exempt.

(2) The clear value of all property distributed or passing to the following ~~amounts are~~ is exempt:

~~(a)--property-of-the-clear-value-of-$15,000--transferred-to:~~

~~(i)~~(a) each ~~--minor--lineal--issue--of-the-decedent~~ any child or lineal descendant of the decedent. A determination as to establishment of the parent and child relationship or establishment of a person as a lineal descendant must be made in accordance with the rules for determining relationship for purposes of intestate succession under Title 72, chapter 2, part 2.

~~(ii)-any--minor-child-adopted-as-such-in-conformity-with-law:~~

~~(iii)~~(b) any minor child to whom such decedent for not less than 10 years prior to such transfer stood in the mutually acknowledged relation of a parent, provided such relationship began at or before the child's 15th birthday and was continuous for 10 years~~;-or~~.

~~(iv)-any-minor-lineal-issue-of-such-adopted-or--mutually-acknowledged-child;-and~~

~~(b)~~(3) The following amounts are exempt:

(a) property of the clear value of $7,000 transferred to ~~each-of-the-lineal-issue-who-have-attained--majority--and~~ to each of the ~~other~~ persons who have attained majority described in 72-16-321(1)~~;~~ and

~~(3)~~(b) Property property of the clear value of $1,000 transferred to each of the persons described in 72-16-321(2) ~~is-exempt~~."

Section 2. Section 72-16-321, MCA, is amended to read:

"72-16-321. Primary rates -- amount remaining after exemptions not in excess of twenty-five thousand dollars. The exemptions allowed by 72-16-311 through 72-16-316 shall be subtracted from the total value of property or beneficial interests transferred to any person, institution, association, corporation, or political entity by the decedent. A tax is imposed upon the first $25,000 in value of the remaining amount of the total value of property or

beneficial interests at the following rates:

(1) at the rate of 2% of the clear value of the interest in property passing to a person if the person entitled to any beneficial interest in such property is:

~~(a)--the--lineal--issue--or~~ the lineal ancestor of the decedent;

~~(b)--any-child-adopted-as-such-in-conformity-with-law-or any-child-to-whom-such-decedent-for-not-less-than--10--years prior--to--such--transfer-stood-in-the-mutually-acknowledged relation-of-a-parent,-provided-such-relationship-began-at-or before-the-child's-15th-birthday-and-was-continuous--for--10 years;-or~~

~~(c)--any--lineal--issue--of--such--adopted--or--mutually acknowledged-child;~~

(2) at the rate of 4% of the clear value of the interest in property passing to a person if the person entitled to any beneficial interest in such property is:

(a) the brother or sister or a descendant of a brother or sister of the decedent;

(b) a wife of a son or the husband of a daughter of the decedent;

(3) at the rate of 6% of the clear value of the interest in property passing to a person if the person entitled to any beneficial interest in such property is the uncle, aunt, or first cousin of the decedent;

(4) at the rate of 8% of the clear value of the interest in property passing if the entity entitled to any beneficial interest in such property is:

(a) a person in any other degree of collateral consanguinity than is hereinbefore stated;

(b) a stranger in blood to the decedent; or

(c) a body politic or corporate."

-End-

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